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JUSTICE AND POLICE IN BENGAL

1765—1793

A Study of the Nizamat in Decline



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1765—1793

A Study of the Nizamat in Decline

By

N. Majumdar, M.A., D.Phil.

Assistant Professor of History, Lady Brabourne College, Calcutta

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Foreword by

N. K. Sinha, M.A., Ph.D.

*Asutosh Professor of Medieval and Modern Indian History,
University of Calcutta*



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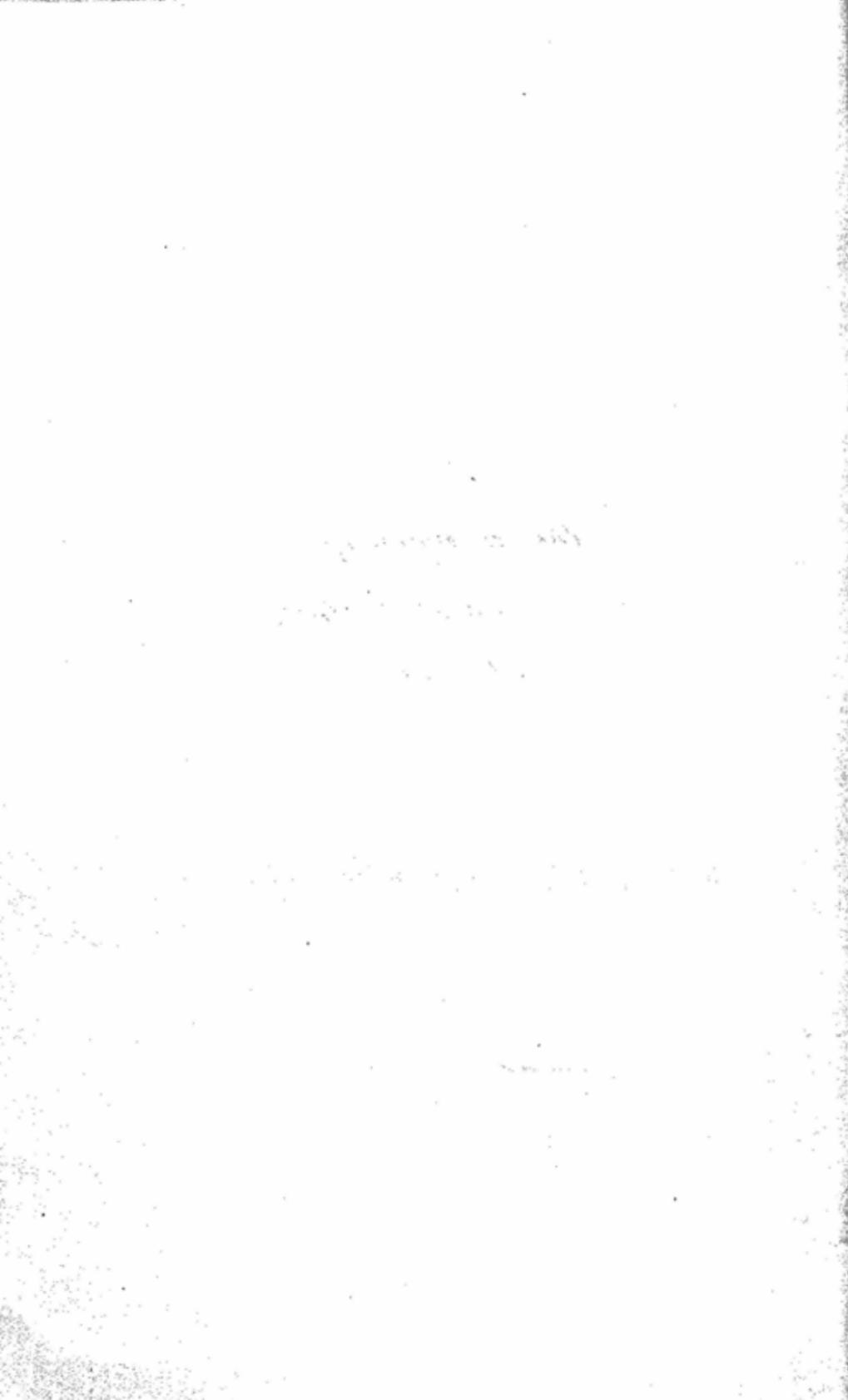
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To
the memory of
my youngest brother,
Kunal



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FOREWORD

This work fills an important gap in our knowledge of the history of Bengal. It helps us to understand how the system of Mughal justice and police broke down. This history of some aspect of administration during the period from 1765 to 1793 is based on a thorough study of available records. It also throws new light on the evolution of British sovereignty in Bengal. Dr. (Miss) Majumdar emphasises the slow operation of British imperium.

Reza Khan was the chief 'native' agent of the East India Company's government in Bengal for more than twenty years. He helped the British to establish their new order. The servants of the Company took a large bribe from Reza Khan in 1765 for selecting him as Naib Diwan. From their point of view the choice was more than justified by the unflinching support which he gave to the British. The overthrow of Nandakumar whose allegiance to the Nawab made them distrust him, was for them absolutely necessary. Otherwise there would have been on a smaller scale in the sphere of administration, the same type of friction which they had experienced during the period from 1760 to 1763. Reza Khan as Naib Nazim supported every new move. It was not usually necessary to threaten or cajole him.

Cornwallis completed the work of Warren Hastings but in a different spirit. He saw corruption all around him and came to the conclusion that honesty and truthfulness were western virtues. The comments of Warren Hastings on this Cornwallis policy were made in his letter to Lord Hastings—"Among the natives of India there are men of as strong intellect as sound integrity and honourable feelings as any of this kingdom. I regret that they are not sufficiently noticed, sufficiently employed nor respected as much as they deserve to be..... the real substance of the population are firm in their affections, simple in their domestic habits, gentle in intercourse, expert in business, quick of perception, patient of inert labour, respectful to authority, faithful and attached servants and

grateful for benefits conferred upon them.....this I can attest from a long and more intimate experience than any other Englishman of this country possesses.....the first study should be to blend as much as possible the interest of the governing with that of the governed.....so as to render them conducive to each other."

Cornwallis acted on the maxim 'no government will be served faithfully that does not reward its servants liberally'. Hope was held out as well as reward but the natives' exclusion was complete. In the existing set up distrust was not unnatural but it was not certainly statesmanship.

The disappearance of the Faujdary jurisdiction, the last vestige of authority left to the Nawab, is described here in detail. The system of Muslim criminal justice does not certainly deserve to be extolled. When it was swept away the British were in a position to make their most valuable contribution to Indian administration—their system of criminal justice. With very commendable scholarly accuracy Dr (Miss) Majumdar gives us a very good idea of what was swept away.

N. K. SINHA

Asutosh Professor of Medieval and Modern Indian History, University of Calcutta

PREFACE

The aim of the present work is to narrate the history of criminal administration in Bengal from the accession of Najm-ud-daulah to the death of Mubarak-ud-daulah.

In 1765, Najm-ud-daulah succeeded Mir Jafar, Clive came to Bengal as its Governor for the second time and the East India Company acquired legal authority over the revenue, civil administration and the entire defence of Bengal without, however, accepting the concomitant responsibilities. Forms of Mughal sovereignty were sought to be preserved by continuing the distinct jurisdiction of the Nazim, the Mughal Emperor's representative in Bengal. By 1793, when Mubarak-ud-daulah expired and Cornwallis left for England, all vestiges of the prerogative of the Nazim were in form and in fact done away with and British sovereignty came to be fully established in Bengal. Thus the years 1765-1793 witnessed the transition from Muslim to British sovereignty.

In studying the Nizamat in decline, attention has been focussed not on the habits, morals and personal affairs of the Nazims, not also on the formalities that were maintained to hoodwink the foreign rivals of the British in India, but only on those vital aspects with which the common people were most immediately concerned, i.e., justice and the security of person and property. In doing this stress has been laid primarily on the administration of justice and secondarily on the police.

Materials of this work have been collected mainly from the contemporary manuscript records of the Education (Records) Department of the Government of West Bengal ; the National Archives, New Delhi ; the Nizamat Department of the Murshidabad Collectorate, West Bengal and the Commonwealth Relations Office, London. In particular, the Proceedings of the Revenue Department and the Revenue (Judicial) Department in the custody of the Education (Records) Department of the Government of West Bengal have been of invaluable help to me. Sometimes, I felt overwhelmed by the volume of materials. I might

have confined my study to a smaller period, but that would not have given a clear perspective of the whole theme. I have also utilised all relevant published records of the Government of India and the Government of West Bengal and also British Parliamentary Papers.

No systematic study has so far been made of criminal administration in Bengal on the basis of the data available from these original records. Due attention has not yet been given to the different phases of the British process of extruding "the native sovereignty by exhausting its functions". It still remains "a riddle" to many "at what moment" British sovereignty came into being in Bengal. In the present work an attempt has been made to meet these requirements and throw fresh light on a significant chapter of our history.

It is now five years since I completed writing this book but I could not see it through the press earlier due to heavy pre-occupations.

My debts of gratitude are many and heavy. My indebtedness to my teacher, Dr. N. K. Sinha, Asutosh Professor of Medieval and Modern Indian History, Calcutta University, for his invaluable help and guidance is too deep for words. I am under special obligation to another teacher of mine, Dr. A. C. Banerji of the Calcutta University, who ungrudgingly helped me in various ways from the inception of this work to its passing through the press. I convey my sincere thanks to Dr. Holden Furber of the Pennsylvania University for his keen interest in my work. I am grateful to Dr. P. C. Gupta and Dr. S. P. Sen of the Calcutta University for their help and advice.

It is also my pleasant duty to thank the officials of the Education (Records) Department of the Government of West Bengal, Calcutta, National Library, Calcutta, and National Archives, New Delhi, for giving me every facility for my studies. My thanks are also due to my publisher, Shri K. L. Mukhopadhyay for his friendly co-operation and to Shri J. C. Goswami and Shri S. R. De for their help at various stages of this work. To Prof. H. P. Chatterji of the Asutosh

College, I am grateful for many useful suggestions and for his readiness to help me at all times. My brothers, Shri S. K. Majumdar and Shri M. K. Majumdar undertook the thankless task of reading the proofs. Lastly, I wish to express my gratitude to Shri A. K. Roy, Assistant Librarian, National Library, Calcutta, whose unfailing help and encouragement made the writing of this book possible.

Calcutta,
5 February 1960

N. MAJUMDAR

ABBREVIATIONS

C. P. C.	... Calendar of Persian Correspondence.
Home Misc.	... Home Miscellaneous Series.
Progs. C.C.R.	... Proceedings of the Controlling Council of Revenue.
Progs. Com. of Circuit	... Proceedings of the Committee of Circuit.
Pub. Cons.	... Public Consultations, Fort William.
Pub. Dept. I.O. Records	... Public Department Records obtained from the India Office, London.
Rev. Cons.	... Revenue Consultations, Fort William.
Rev. Cons. I.O. Copies	... Revenue Consultations obtained from the India Office, London.
Rev. Jud. Cons.	... Revenue (Judicial) Consultations, Fort William.
Secret Cons.	... Secret Consultations, Fort William.
Secret and Separate Cons.	... Secret and Separate Consultations, Fort William.
Sel. Com. Progs.	... Proceedings of the Select Committee at Fort William.
Seventh Report	... Seventh Report from the Committee of Secrecy appointed to enquire into the State of the East India Company, 6 May, 1773.

the first time in the history of the world
that the people of the United States
have been compelled to go to war
in defense of their country.

It is a fact that the United States
has been compelled to go to war
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CHAPTER I

BENGAL POLITICS IN 1765

Mir Jafar paid too dearly to regain the vicegerency of Bengal, Bihar and Orissa. His last days were embittered by unceasing demands of the Calcutta Council. Awfully perplexed by unforeseen problems, with which conspired the imbecility of age and a body worn out with pleasure, he sank into an unhonoured grave.

On the morning of 5 February 1765, Mir Jafar called for Nandakumar, rested his head on his lap and asked him to write for him a letter to the Governor. This was his last letter. The dying Nawab committed his son Najm-ud-daulah with the rest of his family and Nandakumar to the care and protection of the English Government. The letter was concluded by 12 o' clock. He passed away at a quarter past one. Soon after, Middleton, Resident at the Durbar, Gray, Stables and Droke came to express their condolence. With their unanimous assent, Najm-ud-daulah took his seat on the masnad. Nandakumar, his father's "faithful and beloved servant", was confirmed as his minister. Middleton, Jagat Seth and all distinguished citizens gave their nazars and proclamation was made throughout the city. Two days after both the new Nawab and Nandakumar wrote letters to the Council, professing faithfulness to the Company and seeking their favour.¹

The news was not at all unexpected. A few days back, Governor Spencer had been privately informed by Middleton that the Nawab was dangerously ill.² On 29 January Mir Jafar had installed Najm-ud-daulah on the masnad, given him a khilat (dress of honour) and informed the Governor of this act. Apprehending chaos on the Nawab's death, the Governor had at once despatched six companies of sepoys to Murshidabad. The Company must remain the Nawab-maker of Bengal and the Council were not prepared to miss this opportunity. First

of all, they decided to install the Nawab publicly so that everybody might see that he derived his authority from the Company. The Commander-in-Chief was instructed to discourage any application for Sanads. On 12 February the Council unanimously decided that the succession should be continued in Mir Jafar's family.³

Najm-ud-daulah or Mir Saidu—who was to be chosen ? This was the next problem. Mir Jafar had left four sons and five daughters, the eldest son Miran having pre-deceased him. Among the surviving sons, Najm-ud-daulah and Saif-ud-daulah were sons of Munni Begum and Mubarak-ud-daulah—of Babbu Begum. The fourth one, Mir Jan, was the most neglected of the princes.⁴ Miran had left two sons, Mir Saidu and Supan, and two daughters. The eldest of these princes was Najm-ud-daulah, a boy of sixteen. But his education had been entirely neglected ; his character and abilities too were of the meanest order. The only member who protested against the Council's general opinion that he was perfectly devoid of understanding was Mr. Gray. "Was he", said Gray, "more ignorant than he is, he is to thank the English for it, by whose means he was kept three years immured in a house in Calcutta, as in a prison".⁵ The Council, however, decided in favour of Najm-ud-daulah. Burdett in his minute of dissent argued that Miran's son was the lawful heir, while Najm-ud-daulah was the son of Mir Jafar's concubine. And the difficulty of the former's minority might be remedied by the appointment of suitable ministers to function under the Company's supervision till he came of age.

But Miran's son, other members said, was too young and never regarded by the late Nawab as his successor, whereas Najm-ud-daulah had so long passed as the "Chutta" (junior) Nawab and had been formally seated on the masnad by his father. "Certainly", wrote Spencer to the Directors, "he is not equal to such a charge, but as much so, or more than any of his family. To have sought for any one out of the family might, as affairs are circumstanced, have been attended with very evil consequences to your affairs and the country in general at this juncture besides the appearance of injustice it would wear ".⁶ Another

motive, not discussed openly, had no doubt some weight. Najm-ud-daulah could give presents, Mir Saidu could not. "The opportunity of acquiring immense fortunes was too inviting to be neglected and the temptation too powerful to be resisted".⁷ In point of legal right, Subahdar's office was held at the discretion of the Emperor of Delhi. To this the Council paid no regard. They had seen the riches their predecessors had acquired by the elevation of Mir Jafar to the masnad, by that of Mir Kasim, and Mir Jafar's restoration later. Memory was still fresh as to the danger of placing a vigorous ruler like Mir Kasim on the throne. So Najm-ud-daulah was chosen. The draft of a proposed treaty with him was next considered by the Council. The Nawab being a minor and ignorant of administrative matters, they decided that he should have a Naib Nazim as the chief manager of all affairs.⁸

Had Najm-ud-daulah any authority of his own, he would have, no doubt, appointed Nandakumar in deference to his father's wishes. This Brahmin of high rank began his life as a naib of his own father, Padmanabha Ray, an amil. Nandakumar was the Faujdar of Hugli when Clive and Watson conquered the French city of Chandernagore in March 1757, and had he not moved away they could not have occupied it so easily. Most probably he had been bribed to neutrality. But unlike Rai Durlabh, Jagat Seth and others, he soon made his name repugnant to the English by his talent for intrigues and a proneness to exercise it against the Company.

After a prolonged enquiry in 1761-62, the Calcutta Council came to hold that Nandakumar had carried on a treacherous correspondence with the Raja of Burdwan and other rebellious zamindars, endeavoured by forgery and false accusations to ruin one Ramcharan, and was instrumental in conveying letters between the Shahzadah (Shah Alam) and the French Governor-General of Pondicherry. Though direct proofs were wanting, the Council adjudged him guilty and deserving of strict home-internment. The Directors confirmed this sentence.

Again in 1764, Nandakumar was accused of inducing Balwant Singh, Raja of Benares, to violate his treaty with Mir Jafar and

the English, and join with Nawab Shuja-ud-daulah of Oudh. He was even suspected of inciting Shuja-ud-daulah to fight against the English and carrying on a correspondence with the fugitive Mir Kasim as also trying to baffle the negotiations between the Council and Mir Jafar.⁹

The English, therefore, held him in fear and distrust. They could not, however, remove him from affairs of trust on account of Mir Jafar's over-attachment to him. Mir Jafar's appreciation of his services and fidelity was clearly reflected in the distinguished marks of his favour and confidence up to the last hour of his life. In political status, Nandakumar along with the Nizamat Diwan held precedence over any man in the country except only the Nawab and his family. As Rai Rayan,¹⁰ he managed the Khalsa and collected revenues from naibs, faujdars and others. The amils, mutasaddis and diwans in all branches of collections were appointed by him and were directly under him. All the sepoys with their commander Kaim Beg were devoted to him. Young Najm-ud-daulah too was surrounded and guided by his creatures. On all sides, the Company's servants could feel the weight of this "dangerous" man. They were in dread of Nandakumar.

Nandakumar, it may be argued, owed no allegiance to the English and remained the faithful servant of a master in whose interest no less than his own he sought foreign aids to reduce the Company's power. But, for the same reason his removal was thought essential. It was necessary to counteract his influence over the general administration by one whom the Company could trust absolutely.

None appeared to them so fit for trust as Muhammad Reza Khan, a Persian domiciled in Bengal.¹¹ Son of Hadi Ali Khan of Shiraj, he came to India at the age of ten. Married to the grand-daughter of Hazi Ahmad Khan, elder brother of Alivardi Khan, he was for sometime Faujdar of Islamabad (Chittagong) and then Naib of Jahangirnagar (Dacca) in the second administration of Mir Jafar. It is said that he was reluctant to accept the office at Dacca because of the perfect desolation of that chakla and took charge only on a written guarantee by

Mir Jafar and at the intervention of Major Adams. Mir Jafar was hard pressed for money and Reza Khan incurred the Nawab's displeasure for his remissness in the payment of the revenues. Reza Khan paid only Rs. 3,82,105 and was in arrears for about seventeen lakhs of rupees. He was willing to pay Rs. 26,19,178 i.e. Rs. 12,67,064 less than the sum originally agreed upon in the time of Mir Kasim. The angry Nawab, therefore, summoned him to Murshidabad about the middle of 1764 and detained him for six months in his own house under a guard of peons. Early in January 1765, this matter was adjusted by Middleton at the direction of the Governor. It was settled that Reza Khan would pay Rs. 26,86,000 for the current year and Rs. 1,30,000 on account of the arrears of the last year.¹² But this amount was never paid, for just after a month the Nawab died and Reza Khan was desired by the Council to set out immediately to meet the deputation at Murshidabad and accept the highest office of the Subah.

The deceased Nawab disliked him, his son feared and hated him. He had no great achievement to his credit. Still, the choice of the English Government fell on him, for he had helped them with all his resources at the time of their conflict with Mir Kasim.¹³ He would be an easy tool in their hands.

On 20 February the Council signed a treaty and sent a deputation to the Nawab to get it executed. The deputation consisted of J. Johnstone, R. Leycester, A. W. Senior and S. Middleton. They waited on Najm-ud-daulah in his private apartment, delivered to him the draft of the treaty with the Governor's letter and took all possible pains to convince him of the sincerity of their intentions. The Nawab read the draft four times, compared it with the treaty contracted with his father, agreed to accept it, and signed away some essential elements of sovereignty.¹⁴

He was allowed to keep only so many troops as should be necessary for the support of civil officers and the collection of revenues. He agreed to pay the monthly assignment of five lakhs of rupees granted by Mir Jafar to assist the Company in defraying the expenses of the army. He also confirmed the

grant of the chaklas of Burdwan, Midnapur and Chittagong as a fixed resource for meeting the ordinary expenses of Company's troops. The English were obviously resolved to undertake the defence of the country. Spencer wrote, "To prevent revolutions or changes in future, we thought it safest for your affairs to let the defence of the province lay on us, and us only, or in fact that there should be no military force but yours".¹⁵

Secondly, the Nawab was to appoint Reza Khan as Naib Nazim and not to remove him without the consent of the English Government. The appointment, dismissal and allotment of officers and clerks (mutasaddis) must be approved by them. He also agreed to the division of the revenue collection into two or more branches under the Naib Nazim.

The trade concessions granted by his father were also confirmed. Parwanas were granted for the currency of the Company's trade. The English were to trade, as before, free of all duties and taxes, except only $2\frac{1}{2}$ per cent on salt. The Company was again permitted to purchase half the salt-petre produced in Purnea and to share with the Nawab the 'chunam' business of Sylhet for five years. Rupees coined in Calcutta were to pass in every respect as equal to the siccas of Murshidabad. Like his father the Nawab also agreed to pay the kistbundee (installments of money) for restitution to the sufferers in the late troubles. No European was to be allowed in the Nawab's service. The French were not to be permitted to erect fortifications, maintain forces or hold lands.

The measure that was most repulsive to the Nawab was Reza Khan's appointment. He even suspected that Reza Khan would be made Subahdar. He had already sent a parwana ordering the Khan not to move from Dacca. According to the deputies, this parwana was dictated by Nandakumar, but they soon convinced him how idle his fears were on this score and he seemed perfectly satisfied. They also induced him to despatch another parwana to Reza Khan to hasten to Murshidabad, and deferred the ceremony of public installation till his arrival.¹⁶

In fact, the Nawab was not at all "perfectly satisfied". In

his appeal to Clive later on, he narrated how he felt embarrassed since his first meeting with the deputies. Instead of, he said, conveying usual compliments of condolence, they at once sent out all the people present with him, even his brother Saif-ud-daulah. Then they asked him to send for Reza Khan to be Naib Nazim, and until his arrival the Nawab was forbidden to sit in the Diwan khana (Hall of Audience) and carry on any public business. To these proposals, he did not agree and told them that he would follow the paper of advice of his deceased father. They retorted, "your paper of advice was of no force or virtue, and everything must be done as we think proper", and produced a paper and insisted on his signing it. When at the Nawab's call Mir Muhammad Irrich Khan, Nandakumar and other officers wanted to peruse the provisions, Johnstone and Leycester uttered rude words and turned out munshi Sadr-ud-din and threatened the Nawab that he must set up Reza Khan as his Naib and sign the paper immediately, otherwise he "should have no great chance of being in the possession of the Subahdarry". Under such pressure "in an unfriendly manner", he complained, he had to sign the treaty.¹⁷

This treaty had found a critic even within the Council. Gray pointed out how it had left the Nawab only "the name without any part of the power". It was no secret that Reza Khan was hated and suspected by the Nawab. To impose such a person upon him in such an important office was not only cruel, but also insulting. Besides, he added, Reza Khan was not of sufficient rank to hold a post that commanded the two highest officers of the state—Rai Rayan and Nizamat Diwan. Gray also objected to the equal division of the collection of revenues between Nandakumar and Rai Durlabh. As Rai Rayan, Nandakumar alone collected the general revenues of the country, while Rai Durlabh as Nizamat Diwan collected the rents of the Nazim's jagir only and was in charge of the disbursements of the Subahdari. These two departments were distinctly independent of each other and could not be changed or blended without fatal consequences to the country.

The English Government had also reserved a negative voice

in the appointment of other government officers. All these clauses were held by Gray as the greatest mortification they could offer to a prince, their ally and not slave, to one connected with them by ties of friendship and not subjugated by conquest. Contrary to the Company's intention, he added, the Council by these encroachments were usurping the Nawab's authority, so that in consequence the Company and not the Nawab would be considered as principal and accountable for everything. Also, as force was the only argument in their favour, they were tacitly acknowledging the same right in other nations. Finally, Najm-ud-daulah was of sufficient age and capacity to manage his government without Reza Khan to help him. As to his inexperience, only a short time would be required to make it up. In short, Gray wanted that the Naib must be a person in whom the Nawab had sufficient confidence and all appearances of reducing the Nawab's power and its assumption by the English ought to be avoided.¹⁸

In reply, other members advocated their decisions with a remarkable boldness. The Company had certainly a right to expect that its forces were "devoted to establish a succession and government that shall be permanent in itself, secure and beneficial" to its affairs. And this right was not a novel one, being "thrice already assumed". If this was a usurpation, this was not more so than the first appointment of Mir Jafar by the English Government without previous reference to the Court of Directors or the Emperor's assent.

To recognise the Emperor's right of confirmation while the Company supported a Nazim by force was "the greatest absurdity and argument very dangerous to support". Looking back, they might find that all inheritance had been forcibly obtained in 1757 and thereafter. They had thrice imposed on the Emperor the Nazim of their choice, and if they did not exert their influence on this occasion also, Najm-ud-daulah would not long remain the Subahdar of these provinces.

Had they acted otherwise, the whole government would have devolved on Nandakumar, who had an absolute influence on the young Nawab. In Mir Jafar's life time they had tried

in vain to dislodge him from the administration. Now had come the grand opportunity which should not slip by. Nor did they conceive that Mir Jafar and Najm-ud-daulah had any aversion to Reza Khan except what was created by the misrepresentation and jealousy instilled by Nandakumar in their minds. This misunderstanding was but what an hour's conversation would remove. They had faith in Reza Khan. To have him next to the Nawab was all the more necessary, since the latter was worthless.

The plan they had devised was wise, as it was based on check and balance. Its security was ensured by ill feeling between Reza Khan and Nandakumar. There was also no marked intimacy between Reza Khan and Rai Durlabh. Nor could Reza Khan aspire at wielding too much power. The collection of revenue was to be in other hands and divided into two or more departments. Appointment of revenue officers was left not to him but to the Nawab, subject to the advice of the Council. By reserving to themselves the privilege of objection about the misconduct of government servants the Council hoped to exercise a salutary check on the Nawab. Before these arrangements Nandakumar had practically no check over him in the revenue administration since he was responsible to the Nawab alone who could not judge these matters. Nandakumar was now not only placed in a subordinate position but left with an almost equal power with Rai Durlabh, so that their old jealousy would make them constant checks on each other's aspirations. There was no use denying that it was by force—mere force of arms and not legal right—that the English were laying such restraint on a worthless youth at the head of the Subah. Should they, after losing so many lives, give up their authority in Bengal and sacrifice at once all they had been contending for? Thus, in the opinion of the Council majority, the Nawab must be supported by force and be given to understand that he could have no right but what he received from the English and their influence with the Emperor.¹⁹

The Nawab's installation had been deferred at the particular desire of the deputies and he had lent his consent. It was only

on the morning of the 3rd March that the reason of his willingness was revealed, when Nandakumar came to the deputies with a parwana from the Emperor promising the Nawab confirmation in the Subahdari. It had been obtained through Shitab Ray, the provincial Diwan of the Emperor, in consequence of the Nawab's application. This attempt at upholding the *de jure* position of the Nawab had to be frustrated. The deputies hurried to the killa (fort) and explained to the Nawab the impropriety of such a measure. He was told that if Sanads from the Emperor should ever appear necessary they were to be obtained through the Council's application alone. That very morning the deputies publicly seated the Nawab on the masnad and mutually exchanged the articles of the treaty. Reza Khan received the title of Muin-ud-daulah Muzaffar Jang with the office of Naib Subah. On the 7th, Najm-ud-daulah was proclaimed by the Council on behalf of the Company as the Subahdar of Bengal, Bihar and Orissa.²⁰

The next task of the deputies was to remodel the revenue administration in accordance with the treaty. They now set to acquire an actual knowledge of the revenue and consolidate the Company's power. But this work proved far more difficult than they expected on account of the tough resistance from Nandakumar and mutasaddis under him. Neither he and his officers nor the zamindars made the usual acknowledgement to the new Naib Subah till Nandakumar was "absolutely" ordered by the Nawab to do so at the instance of the deputation. In violation of the treaty Nandakumar still remained the principal adviser of the Nawab and carried on the functions of the Naib Nazim. The English gentlemen, therefore, in the very presence of the Nawab and the munshis, plainly explained to him that his authority was to be limited solely to the collections. Though the Nawab appeared very submissive, the gentlemen felt ill at ease to find that all the people around him as also the commander Kaim Beg were exceedingly devoted to Nandakumar and hostile to the recent changes. Of the affairs of Bihar they could hardly get any information. If Nandakumar were not kept under close watch, the deputies feared, he would surely upset the

recent measures and resume the great power they wanted to vest in Reza Khan.

Rai Durlabh also reported against the "evil-minded people" of Murshidabad, who had taken offence at his promotion and that of Reza Khan and incited Kaim Beg to create a disturbance under the pretence of arrears of pay and to murder the two ministers. Kaim Beg was getting ready in the hope that the few troops at Murshidabad would not get much help from Calcutta or from the west. The crisis was averted by Reza Khan's strict orders for payment of arrears.³¹

But these refractory elements had to be removed from the Nawab's Government. Before long, an opportunity was found to overthrow Nandakumar. On 10 March the members of deputation informed the Council that Vansittart who had just arrived from the army had communicated to them "some very corroborative proofs of the treacherous correspondence imputed to Nandakumar in April, 1764." On the 16th the relevant papers were laid before the Council who assumed the charge against Nandakumar as fully proved. They regarded it absolutely unsafe to allow Nandakumar even the smallest share in the government. Letters were, next day, despatched to the Nawab as also to the deputation to send Nandakumar to Calcutta to stand an enquiry and to transfer the branch of revenue allotted to him to other reliable servants.

On the morning of the 20th, advised by the Nawab, Nandakumar went to Motijhil only to pay a visit to the deputies. They left him there under a guard and came to the Nawab with the Governor's letter. At first, the Nawab agreed to Nandakumar's staying at Motijhil till he heard from Calcutta. The gentlemen were glad at his ready compliance. Many messages, it is said, passed then between Nandakumar and the Nawab. At about 7 P. M. the Nawab sent to them a message insisting that Nandakumar should be sent to him, for he regarded Nandakumar's honour as his own. At break of day he met them and "scarce kept within the bounds of decency" when he reiterated his fondness for Nandakumar and protested against his detention. Nandakumar was then released on condition that the Nawab

would himself send him down to Calcutta if the Council persisted in that request and would not in the meantime admit him to his Council.²² In a letter to the Governor, the Nawab now sincerely tried to prove the falsehood of the charge against Nandakumar. It had been, he pointed out, proved baseless in the three previous enquiries of the last year. And if at all he was to be sent to Calcutta, the Nawab too would accompany him with his household and servants. The English Government were alarmed at such an outburst of affection. It was extremely dangerous that such a man should continue to be "the chief adviser and director of this young and inexperienced prince." They repeated their positive orders. At last after much pains the Nawab was made to understand that "there is no difference between the Nizamat and the Company", and Nandakumar was sent to Calcutta a prisoner. Najm-ud-daulah had to yield.²³

The chief obstacle being thus removed, it was now easier for the English Government to fill the revenue offices with their own nominees. Though based on imperfect knowledge, a sketch was drawn up by them for dividing the superintendence of the collections among different persons with preference for their friends and proteges. The principal power in the collections in Bihar was in the hands of Dhiraj Narayan and "Kittle Dass, the Duans put in by Nundcomer", while the amils had been appointed by Mir Jafar and Nandakumar. A change in the staff was therefore requisite. Gopal Krishna, a son of Raja Rajballabh, was recommended for that province. Rai Durlabh's devotion to the English earned for him a good reward. The deputies proposed a large allotment for him. He was also to continue in the office of Nizamat Diwan in which capacity he was in charge of particular collections amounting to about six lakhs of rupees per annum. Upon a supposition that Nandakumar would not be acquitted of the charge, they made enquiries about the most efficient revenue officers. The plan was to assign to each of them a branch of the collections. This division was considered to be the safest arrangement. None of these superintendents with their power thus reduced were likely to acquire any improper influence in the country and they might be

displaced at any time. The appointment and dismissal of amils, settlement and collection of revenue were to rest with the Nawab as before. The Naib Nazim was to be consulted in adjusting the band-o-bast (settlement of revenue) and was, in general, to superintend the whole system and to suggest to the Nawab any necessary amendment.

There was a rumour that Miran's son had procured Sanads for the King's Diwani lands, which were generally assigned to the Padshahi Diwan. Though the deputies could find no trace of his actual enjoyment of such a Sanad, he was proposed to be made harmless by an assignment of Rs. 5,000 per month, settled upon him and his mother without any office, but with liberty to reside wherever they pleased. Jasarat Khan's good services to Mir Jafar and the English, his rank and character made him dear to the English. His name was now proposed for the office of the Faujdar of the important frontier province of Purnea in the place of Rah-ud-din Husain Khan. Of the five or six ill-advisers who, the deputies feared, had the Nawab's confidence and might poison his mind against the English, one was Muzaffar Ali who held the office of Arz-begi. Nandakumar had immense influence over him. Muzaffar Ali and Nandakumar's brother who was in charge of the revenue of Rajshahi were to be dismissed. The Council approved of most of these proposals and the President wrote to the Nawab on this subject with the particular request to transfer the branches under Nandakumar to other hands.²⁴

Najm-ud-daulah agreed to all the proposals except one. The strongest representations of the English could not secure his consent to Rai Durlabh's appointment. Rai Durlabh had helped Mir Jafar in his first accession. He was appointed Nizamat Diwan by Mir Jafar and exercised great influence over all affairs.²⁵ Afterwards they fell out and Rai Durlabh took shelter in Calcutta. In spite of repeated summonses of Mir Jafar, he did not come back to Murshidabad during the latter's life time.²⁶ Under the Governor's order he now returned to Murshidabad to assume the charge of his new assignment. Najm-ud-daulah did not forget the enmity and jealousy that

had subsisted between his father and Rai Durlabh. Moreover, a letter from Shuja-ud-daulah of Oudh to Rai Durlabh had fallen into his hands and he lost all confidence in the latter. The Council wrote highly of his ability and experience. They did not attach any importance to the Wazir's letter and wanted the Nawab to take it as a stratagem of the Wazir. But the Nawab refused to be convinced. At last the Council ceased insisting on Rai Durlabh's appointment in the department of revenue and hoped that the Nawab would not object if Rai Durlabh held only the office of Nizamat Diwan. Thereupon, the Nawab divided Rai Durlabh's share of the collections among five persons, Gopal Krishna, Hiralal and others.²⁷ A battalion of sepoys was stationed at Murshidabad under the Resident at the Durbar.

Thus stood the affairs when Clive returned to Bengal as Governor for the second time. At the head of the Select Committee he was endowed with full powers to restore tranquillity and reform abuses that had grown chronic in the Company's affairs in India.

Clive expressed indignation at the Council's hasty selection of a new Nawab and the conclusion of a treaty with him without waiting for the Select Committee's approval. He decided, however, to treat the new Nawab with respect and dignity. He arrived in Calcutta on 3 May. A close study of the consultations of the Council took only two days to confirm his suspicion about what was so notorious throughout the town. This was the rumour of the receipt of large sums of money by the members of the deputation and the Council at the time of Najm-ud-daulah's accession. This receipt of presents, if true, was contrary to the positive orders of the Court of Directors, which ran to the effect that the Company's servants should execute covenants restraining them from accepting, directly or indirectly, from the Indian princes any grant of lands, rents or territorial dominion or any present whatever, exceeding the value of four thousand rupees without the consent of the Directors.²⁸ Clive only waited for the arrival of the Nawab and his ministers.

In Murshidabad, Najm-ud-daulah's life had been made

miserable since his father's death. The contemptuous treatment by the deputies along with Reza Khan's appointment as the virtual head of the administration tormented him. Day and night, he was, as it were, "in a flame". As soon as he received the news of Clive's return, he set out for Calcutta in the hope of redress. Reza Khan and Rai Durlabh wanted to accompany him, but he did not give them his permission. A few days later, like the Seth brothers they also started for Calcutta in all haste.²⁹

The Nawab delivered a petition to the Select Committee, bitterly complaining of the insulting behaviour of the members of the deputation, who had totally ignored the instructions left by his deceased father, forced Reza Khan and a treaty upon him against his wishes, maliciously accused Nandakumar, his intimate well-wisher, and sent him away to Calcutta under a guard. He also charged Reza Khan with embezzling twenty lakhs of rupees in cash and goods from the Murshidabad treasury "for the better securing his Naibship". And there was a balance due from Reza Khan of about twenty lakhs of rupees in respect of Dacca, Sylhet and Roshanabad, of which he had not paid a single cowrie.

How the Nawab was reduced to non-entity was then described. Reza Khan in collaboration with Johnstone, Leycester and Rai Durlabh took possession of 'muchalka' papers, affixed the Nawab's seal under his own seal and left nothing to be done at the Nawab's will or order. Titles, employments, khilats, elephants, horses and jewels were granted and distributed according to Reza Khan's sweet will. And what was the condition of the revenue? There was a balance due to the Government from the ziladars (district officers) of fifteen lakhs of rupees and yet new employments were granted to them. Lands were divided, the current year's rents and the Punyaha³⁰ were disposed of in a way they pleased. The treasury was so depleted that before coming to Calcutta, the Nawab was much distressed for money for paying wages to his servants and other necessary expenses.

The Nawab humbly appealed to the Select Committee to put his affairs on a proper footing. So public a complaint

could not be ignored: On the facts before them, the Select Committee held unanimously that Reza Khan had distributed nearly twenty lakhs of rupees among "certain persons".³¹ The Committee, therefore, instituted an inquiry.

Reza Khan was called upon to account for this large disbursement from the treasury. His narratives threw a flood of light on the circumstances in which the deputies received presents separately from the Nawab and himself. Enquiry was also made of Jagat Seth who described how a large sum was extorted from him by intimidation. It appeared from the narratives of Reza Khan and Jagat Seth as also from the deposition of one Basanta Ray connected with the transaction that Motiram, Faujdar of Hugli, was employed by Johnstone as a middle man in these pecuniary transactions. He also was examined at length by the Committee.

These accounts showed that after the Nawab's accession Johnstone sent to Reza Khan a message through Motiram that the English gentlemen expected presents from the Nawab, since they had placed him on the masnad. Reza Khan reported this to the Nawab. Under their earnest pressure, the Nawab gave Rs. 8,75,000 to the nine gentlemen from 12 April to 1 May :—Rs. 2,50,000 by four bills upon the House of the Seths, and the remaining Rs. 6,25,000 in ready money from the treasury.

As regards the presents he himself gave, Reza Khan narrated how the suggestion that he should give the gentlemen some presents for his appointment as Naib Subah was pressed on him by Motiram. At first he replied that he would do what was in his power, but would not be able to give much, thereupon Motiram came again and told him that the gentlemen were offended with him. So, to please them he gave them two notes for Rs. 4,75,000. The first note for Rs. 4,00,000 was to be divided equally among Johnstone, Senior, Middleton and Leycester. The second note for Rs. 75,000 was unknown to the other gentlemen. It was given secretly—Rs. 50,000 for Johnstone and Rs. 25,000 for his younger brother G. Johnstone. Out of the stipulated sum of Rs. 4,75,000, he paid Rs. 2,25,000 and the rest remained due. Reza Khan's second statement showed that he

had given another sum of Rs. 90,000 to Spencer in the regime of Mir Jafar and thereafter.

Jagat Seth also stated that these gentlemen had asked him through Motiram to give them presents so that they would settle all his business according to his heart's desire ; otherwise they would be displeased and would not assist him. Finding him unwilling, they threatened that if he "wished to have the business go freely on", he must give presents. "Being remediless", he consented to give Rs. 1,25,000. Of this, he sent Rs. 50,000 immediately and the rest remained due.³²

After due enquiries the Select Committee declared these English gentlemen guilty, in varying degrees, of actual disobedience to the Company for receiving presents in contravention of its express orders. Johnstone had, the Committee unanimously held, actually received the several sums in money and bills specified in the accounts of Reza Khan and Jagat Seth, and also had been a principal agent in obtaining and distributing the presents. Senior, Leycester and Middleton had received the money specified in the accounts, but they neither authorised the messages delivered by Motiram nor were active in obtaining the presents which they believed to be voluntary, and Middleton always intended to refuse the present offered for him by Reza Khan. As regards the bill of Rs. 50,000 taken by Motiram from Reza Khan on behalf of Leycester, the Committee were convinced that the latter had neither received nor intended to receive the sum. It was privately tendered back to Reza Khan by Motiram himself. About the Councillors, Playdell, Burdett and Gray, it was admitted that they had each received Rupees 50,000 from the Nawab in the belief that it was a free gift to them, without any solicitation on their part or demand on the Nawab for services performed. The single person exonerated from all allegation was Cartier who had evidently no knowledge of any demand made in his name and would have refused the lakh of rupees intended for him by the Nawab, had it ever been tendered to him.³³

The sums stated against their names are as follows :—

		From Najm-ud-daulah	From Reza Khan	From Jagat Seth	Total Rs.
		Rs.	Rs.	Rs.	Rs.
1.	Spencer	... 1,00,000	90,000	...	1,90,000
2.	Playdell	... 50,000	...	...	50,000
3.	Burdett	... 50,000	...	...	50,000
4.	Gray	... 50,000	...	...	50,000
5.	Senior	... 1,12,500	50,000	10,000	1,72,500
6.	Middleton	... 1,12,500	...	10,000	1,22,500
7.	Leycester	... 1,12,500	...	10,000	1,22,500
8.	J. J. Johnstone	... 2,37,500	1,00,000	10,000	3,47,500
9.	G. Johnstone	50,000	25,000	10,000	85,000
		<hr/> 8,75,000	<hr/> 2,65,000	<hr/> 50,000	<hr/> 11,90,000

Besides these sums, it appeared that several lakhs of rupees were procured from Nandakumar and Rai Durlabh each of whom aspired at and was promised that very office which was predetermined in favour of Reza Khan.⁸⁴

The inculpated gentlemen, however, tried to justify the receipt of presents by arguments which rendered their conduct more culpable. Acceptance of presents, Leycester argued, was sanctified by the custom of the country and the sole author of the petition from the Nawab was Nandakumar. He denied having received a single rupee from Reza Khan and remonstrated that the Nawab should apologise for his insulting language. The former Presidents, said Gray, had set the example by accepting such presents themselves. The Government could very well afford to make this present. Burdett declared the no Committee had any authority to try him on this charge unless they were specially empowered to do so. Johnstone who had been exposed as the principal actor in the whole episode boldly retorted that they had only followed Clive as guide, who through Mir Jafar's bounty had made his fortune easy. Middleton affirmed that at the time of receiving the presents he had no conception of being guilty

of a breach of trust, for he had neither executed the covenants nor received any public or private information of their arrival.

Their common argument was that these covenants could not be obligatory as they were not then executed. But the Court's orders had reached Calcutta in January last. If these were not still put in force, it was certainly an act of gross disobedience on their part. Apart from these covenants, the gentlemen were guilty of a breach of trust and contempt of the authority of their employers, for receipt of donations was never lawful without the Court's sanction. In vindication of their conduct, they stated that they had agreed to receive the presents as voluntary gifts only in response to the earnest requests of the donors. They were not aware of any menace, request or solicitation on their part.³⁵

But these vast sums were by no means free gifts. The dependent condition of the minor Nawab and his timid Naib was itself a refutation of the plea ; the Nawab's letter to Clive and the Select Committee, with the corroborative statements of the Seths and Reza Khan, and the depositions of Basanta Ray and Motiram clearly proved that these had been exacted as the price of protection. Also, the Company was engaged in a war which cost it from ten to twelve lakhs of rupees per month, for which the Nawab had stipulated to pay not more than five lakhs monthly and even that fell into arrears. The Nawab was at the same time pressed for payment of the remaining thirty lakhs for restitution, besides other unlawful demands on him.

Vainly did the gentlemen strive to justify their conduct with a vigour and audacity worthy of a better cause ; there is no denying the fact that throughout the whole transaction one thought pervaded their minds and that was how to make the best bargain for themselves. It seemed to "demonstrate", wrote the Select Committee, "that every spring of this government was smeared with corruption, that principles of rapacity and oppression universally prevailed, and that every spark of sentiment and public spirit was lost and extinguished in the unbounded lust of unmerited wealth."³⁶

Reorganisation of the Murshidabad Government was also

called for. Of the Nawab, Clive formed a poor opinion. The more he saw the Nawab, the more he was convinced of his incapacity for work. His ignorance only enhanced the difficulties of his ministers. He was not only young but also very simple-minded. Clive was shocked to see "what a set of miserable and mean wretches Nundcomar had placed about him, men that the other day were horse-keepers." It appeared to Clive that there had been an unholy combination between the blacks and the whites for dividing all the revenue between them, and the Nawab was kept ignorant of all this. Large sums had been taken out of the treasury by Reza Khan at Murshidabad and by Nandakumar at Calcutta. A very large amount was due to the merchants on account of restitution and the monthly payments to the Company were several lakhs in arrears. Clive was unwilling to restore Nandakumar to power. "Although", he wrote to Carnac, "Nundcomar may not prove guilty of the crime laid to his charge, yet, believe me, my dear General, he will do no honour, either to the Nabob or to the Company in any great or eminent post, which he never was formed or designed for." He was also averse to Reza Khan's continuance in the Naib Nazim's office and observed, "His being a Mussulman, acute and clever, are reasons of themselves, if there were no others, against trusting that man with too much power."³⁷

As a matter of fact, an unlimited authority in the hands of any individual appeared dangerous to the new establishment. Moreover, the Nawab was highly dissatisfied with the plenary powers vested in the Naib Subah. Despite his accusations, Reza Khan was not dismissed, "so openly and candidly has he accounted to the Select Committee for every rupee disbursed from the treasury." But he had to relinquish a part of his authority. With a view to producing the "perfect equilibrium of influence" Rai Durlabh and Jagat Seth Khushal Chand, both adherents of the English, were associated with him with an equal power, so that each became a check on the conduct of the others.

According to the new regulations, Reza Khan became Naib-Nazim, Rai Durlabh Diwan, while Jagat Seth Khushal Chand

and Maharaja Udwat Chand were to act as chiefs of trade: The appointment and dismissal of Faujdars, amils and other officers and the management of the revenue were to be in their hands. They were to maintain the requisite number of cavalry and infantry and all unnecessary expenses were to be reduced. They were also asked to remove from the Court all mischievous men and evil advisers. If at any time the Nawab's Government failed to maintain peace or the ministers were unable to act amicably, the matter was to be referred to the Governor for proper steps. After necessary disbursements, the surplus was to be deposited in the public treasury under the care of Reza Khan, Rai Durlabh and Jagat Seth, in such a way that neither of them might be able to take out any money without the consent of the other two. For the preservation of harmony and "the care of Nawab's affairs and the Company's money" a member of the Council was to reside at Murshidabad. He would draw a suitable monthly allowance from the treasury and examine monthly the accounts of the receipts and expenditure of the Government.³⁸

The regulations drawn up, Clive left Calcutta on the 25th June and halted at Motijhil near Murshidabad. Here he found the new system in danger. The plan was that the three ministers should never interfere in each other's authority. But Rai Durlabh was over-stepping his limits by claiming the right of nominating the revenue officers and Reza Khan was yielding too readily to his encroachments. Sykes was therefore sent to Murshidabad, as the deputy of the Select Committee, to restore the balance of power and harmony.

The secret of the passive behaviour of Reza Khan was revealed only after some days. The timidity of Reza Khan and Jagat Seth was well-known. Now Kaim Beg, a common enemy of both, frightened them so much by his frequent threats, that they became totally inactive and left everything to be done by Rai Durlabh. Did Kaim Beg behave so on his own initiative? Or was he instigated by the Nawab or Nandakumar? Clive could not actually determine. Any how, he did not think it safe to leave Kaim Beg at large. So he was

taken into custody and sent to Calcutta.³⁹ By the 9th July, new regulations were duly signed, ministers were acting in harmony and a Sanad was obtained for the reversion of Clive's jagir in perpetuity to the Company.

Clive's business at the Murshidabad Durbar was over. He now left for the up-country on a very significant mission. On receipt of the news of Mir Jafar's death as also the success of the British arms against Shuja-ud-daulah, Clive had devised in his own mind a scheme for the three provinces to be governed by the English under the direct authority of the Emperor. He would have chosen the infant son of Miran for the empty throne of Murshidabad. Frustrated for the moment by the hasty action of the Calcutta Council, Clive could see that it was not yet too late. Continuous struggles for superiority between the agents of the Nawab and the Company, together with the recent proofs of extortion and corruption, influenced his decisions. He resolved to reintroduce with certain modifications the system which had prevailed in these provinces from the time of the Emperor Akbar and which, therefore, had the sanction of ancient usage. According to this system the responsibility for defence, maintenance of the public peace and administration of criminal law of the three provinces of Bengal, Bihar and Orissa rested with the Nawab Nazim, while a Diwan had the charge of the collection of revenue, expenditure of government money and dispensation of civil justice.

Twice before, in 1758 and 1761, the Court of Delhi had offered to confer on the Company the Diwani of Bengal on condition of its being answerable for the royal revenues, but the English had prudently declined that offer in order to avoid any jealousy or ill feeling between the Company and the Nawabs of Bengal.

But the circumstances had changed. A young and ignorant Nawab had been "seated" on the masnad of Bengal, Delhi was in the Afghan hands and Oudh prostrate before the English. The Mughal Emperor was only a homeless wanderer — a dependant on the Company's favour. Now was the time for negotiating with the Emperor for the Diwani of Bengal,

the Select Committee wrote to Clive. Clive too felt that the Company should now act as the Diwan of the Emperor and the revenues of Bengal should be spent in maintaining the army, meeting other necessary expenses and paying the Emperor's tribute and an annuity of Rupees fifty lakhs to the Nawab for all his expenses.⁴⁰

Negotiations with the Nawab presented no difficulty. The huge expenses of the army, the large sums due for restitution and to the navy, together with the annual tribute to be paid to the Emperor—all these were pointed out to the Nawab and he agreed to Clive's proposal.⁴¹ Before his departure, Clive commissioned Sykes to adjust with the Nawab the particulars of the settlement. Sykes first tried to get an idea of the Nawab's immediate expenses. His next object was to convince the Nawab about his own difficulties as also those he would create in the government on account of his ignorance, and thus to persuade the Nawab to accept his proposals. The Nawab represented that the annuity of fifty lakhs was not really sufficient for his expenditure on sawari (retinue), sepoys, household affairs, Munni Begum, families of his brothers and other personal matters. Sykes admitted that the Nawab's demand was not unreasonable. Clive had himself seen that his expenses exceeded this sum.

It was, therefore, settled with Najm-ud-daulah that he would accept a stipend of sicca Rs. 53,86,131 per annum and make over all the affairs of government to Reza Khan, Rai Durlabh and Jagat Seth and the management of the Subahdari to the Company. Sykes also procured from the Nawab 106 parwanas for trade in salt, betel-nut and tobacco which enabled the Company to enter immediately into contracts. The three ministers—Reza Khan, Rai Durlabh and Jagat Seth were placed in charge of the stipends of the Nawab's mother, brothers and Miran's son. They were also to make payments towards the Nawab's sepoys, 'horse' servants and others.⁴² "Roy Dullub must be watched and not suffered to pilfer, steal, extort or oppress", Clive wrote to Sykes from Benares. But Sykes was convinced that Rai Durlabh had realised his error and would give no cause for further complaint.

Meanwhile, Clive was proceeding up the river and met Shuja-ud-daulah at Benares. The Nawab Wazir's armies had been repeatedly defeated and his capital taken. He was eager for peace. On 2 August Clive had an interview with him and settled the conditions of restoring his dominions and hastened to Allahabad to meet the Emperor Shah Alam II. The Emperor who had entered the British camp a fugitive now began to make numerous demands. Since Mir Jafar's death not a single 'dam' had been paid. His Majesty insisted on five lakhs and a half in jagir according to his engagements with Mir Jafar and Mir Kasim. Acceptance of this demand might lead to endless political complications. He was, therefore, persuaded to withdraw it. Next, he asked for the arrears of Rupees thirty-two lakhs due to him from Mir Jafar, Mir Kasim and Najm-ud-daulah. In answer, absolute impossibility was pleaded of paying even one rupee due to the insolvency of the treasury. The Emperor was displeased. But Clive was steady in his terms and the Emperor acquiesced at last.

It was finally settled on 11 August that the Emperor would receive an annuity of twenty-six lakhs of rupees as his revenue from Bengal. Kora and Allahabad were also ceded to him as royal demesne for maintaining his dignity. Clive and Carnac then presented two petitions to the Emperor for granting the Nizamat of Bengal, Bihar and Orissa to Najm-ud-daulah and the Diwani of these provinces to the Company. Both the petitions received His Majesty's sanction.

On 12 August 1765, the Emperor took his seat not on the famous Mughal throne, made of gold and inlaid with priceless gems, but on an arm chair covered with some drapery, standing on an English dining table in Clive's tent. The Imperial Farman was read, executed and handed over to Clive by His Majesty. It conferred upon the Company in perpetuity the Diwani authority over Bengal, Bihar and Orissa. The Company had to be the security for regular payment by the Nawab of the sum of twenty-six lakhs of rupees a year as the royal revenue. As the Company had to maintain a large army for the protection of these provinces, the Farman granted to it whatever surplus

might remain out of their revenues, after remitting twenty-six lakhs to the Emperor and providing for the expenses of the Nizamat. This Farman was followed by an Agreement, dated 19 August, between the Nawab of Bengal and the Emperor in which the same provisions were incorporated.⁴³

Thus, a momentous transaction was concluded, as Ghulam Husain puts it, "in less time than would have been taken up for the sale of a jack ass, or of a beast of burden, or of a head of cattle".⁴⁴ The supreme control over the administration in Bengal had long before passed into the hands of the Company. What was wanting was a constitutional form—a legal title. This was now furnished by the Imperial Farman. "Pompous absurdity", as it was, it counted for much.

Under the Agreement with the Company, dated 30 September 1765, the Nawab consented to accept the annual sum of Rs. 53,86,131-9-0 as an adequate allowance for the support of the Nizamat and this was to be exceeded on no account. It was to be regularly paid to him as follows :—(a) the sum of sicca rupees 17,78,854-1-0 for all his household expenses, servants and others, and (b) the remaining sum of Rs. 36,07,277-8-0 for the maintenance of such 'horse', sepoys, peons, barkandazes as might be thought necessary for his sawari and for his dignity, provided however that such an expense was found necessary to be kept up in future.

Again, Sykes proposed to the Nawab that he should dismiss "the useless rabble" of horse and foot and accept in their place 1,000 or 1,500 of the Company's sepoys. Thereby there was a saving to the Company of eighteen lakhs of rupees, to be deducted from the sum of Rs. 36,07,277-8-0 of the Nawab's stipend. The Nawab is said to have acquiesced in this proposal from a conviction that this would promote his own ease, the country's peace and the Company's interest.⁴⁵

Henceforth, no future Nawab would have power or riches sufficient to overthrow the Company's possessions. While the Nawab had the collections in his hand, the means of maintaining the Company's military establishments depended on his sweet will. His payments were often unpunctual and

deficient: His revenues were either withheld by zamindars or dissipated in profusion. So the Company was frequently disappointed of necessary supplies even in the most critical situations. But henceforth there would remain about two crores with the Company, clear of all expenses in collections. This would certainly help the English to secure their commerce and territorial possessions and keep the Nawab in bondage. Earlier in the year, Najm-ud-daulah had concluded a treaty, by which the military defence of the country devolved on the English Government. After the Company's acquisition of the Diwani the military dependence of the Nawab was completed.

A decade had not passed since the day when Siraj-ud-daulah crossed the Hugli to crush the English merchants of Calcutta. And the Nawab Nazim of Bengal, Bihar and Orissa became, "with his free will and consent", a pensioner without any authority in any sphere of government except the criminal administration.

References

1. Secret Consultations, 8 Feb. 1765 ; Calendar of Persian Correspondence, vol. 1, Nos. 2549-52 ; Letter to Court, 8 Feb. 1765 (Public Dept. India Office Records, 1765, Bengal Letters Received, Vol. 6).
2. Secret Cons., 4 Feb. 1765.
3. Secret Cons., 8 Feb., 12 Feb., 1765.
4. He was also known as Nawab Ashraf Ali Khan (vide *The Genealogical Tree of the Nizamat family*). He was not even mentioned in the Council's Secret Letter to Court, dated 8 Feb. 1765. He died of small-pox in 1770.
5. Najm-ud-daulah went to Murshidabad only before his father's death.
6. Secret Letter to Court, 8 Feb. 1765 ; Secret Cons., 12 Feb. 1765 ; Separate General Letter to Court, 11 March 1765 ; Spencer's Letter to Court, 14 March 1765 (Pub. Dept. I.O. Records, 1765).
7. Select Committee's Letter to Court, 30 Sept. 1765.
8. Secret Cons., 14 Feb. 1765 ; Letter to Court, 11 March 1765. (Pub. Dept. I. O. Records, 1765)

9. General Letter from Court, 22 Feb. 1764 ; Secret Cons., 11 Oct. 1764, 16 March 1765 ; Progs. Com. of Circuit at Kasimbazar, 26 July 1772.

10. A title assigned to the Hindu Finance Minister and Treasurer of the Nawab of Bengal.

11. To quote Dow, "a man of less integrity than abilities" (*The History of Hindostan*, vol. III, P. xc).

12. Calendar of Persian Correspondence, vol. I, Nos. 2522-23, 2525, 2534, 2536, 2538.

13. In his last letter to the English Government Reza Khan wrote, "when the Mir (Mir Kasim) violated his engagements with the Company, Mr. Vansittart despatched a force from Calcutta to assist Nawab Jafar Ali Khan against him and at the same time asked the writer to send the troops with his followers and afford such assistance to them as lay in his power. He accordingly used his utmost endeavours and manifested his zeal and devotion to such a degree that he obtained commendations from the Council, who being convinced of the sincerity of his attachment, appointed him Naib Subah of Bengal with the chief management of all affairs." (C.P.C. vol. IX, No. 1546).

14. Secret Cons., 20 Feb., 28 Feb. 1765 ; Aitchison—*A Collection of Treaties, Engagements and Sanads relating to India and neighbouring countries*, vol. II, pp. 237-240.

Condemning this treaty, the Select Committee wrote that it "was pressed on the young Nabob, at the first interview, in so earnest and indelicate a manner as highly disgusted him and chagrined his ministers, while not a single rupee was stipulated for the Company, and their interests were sacrificed; that their servants might revel in the spoils of a treasury before impoverished, but now totally exhausted". (Letter to Court, 30 Sept. 1765).

15. Spencer's Letter to Court, 14 March 1765 (Pub. Dept. I.O. Records, 1765, Bengal Letter Received, Vol. 6).

16. Secret Cons., 28 Feb. 1765. Burdett and Gray observed that the postponement of the ceremony implied too much respect and consideration for Reza Khan to the diminution of the Nawab's authority.

While approving the nomination of Najm-ud-daulah as Subahdar and the appointment of a regent, the Directors were not very happy in the choice of Reza Khan on account of his deficiency in accounting for the revenues of Dacca. (Letter from Court, 19 Feb. 1766).

17. Sel. Com. Progs., 1 June 1765.

Thus he began his letter, "The situation which I am now in will not permit me to acquaint you with all the circumstances which have happened, but I will make part thereof known to you".

18. Secret Cons., 19 Feb., 20 Feb. 1765.

19. Secret Cons., 20 Feb. 1765 ; Letter from Spencer to Court, 14 March 1765.

20. C. P. C. vol. I, Nos. 2599-2600 ; Secret Cons., 6 March 1765 ; Letter to Court, 11 March 1765 (Pub. Dept. I.O. Records, 1765).

Gray said, it was very natural for the Nawab to apply to his Sovereign for a sanad of confirmation and due respect ought to be paid to it.

It was to the English Governor that the Emperor complained in June that inspite of Imperial letters (Shukkas) Najm-ud-daulah had not as yet received the Sanads, and that the present manager of the Nawab's affairs was "careless and ignorant of the customs of the Empire". (C.P.C., vol. I, No. 2662).

As to Nandakumar's role in these intrigues, Hastings himself once admitted, "Surely it was not only not culpable but even praiseworthy. He endeavoured to give consequence to his master, and to pave the way to his independence, by obtaining a firman (sic-Farman) from the King for his appointment to the Subaship and he opposed the promotion of Mahmud Rizza Cawn, because he looked upon it as a supersession of the rights and authority of the Nabob" (Progs., Com. of Circuit, Kasimbazar, 28 July 1772).

21. Secret Cons., 16 March 1765 ; C.P.C., vol. I, No. 2611.

22. The Nawab's version was that he begged and entreated the gentlemen, in the most suppliant manner, to release Nandakumar. "At length, they gave in after having made His Excellency give them under his hand whatsoever they desired". (C.P.C., vol I, No. 2616).

23. Secret Cons., 16 March, 25 March, 1 April, 1765 ; C.P.C., vol. I, Nos. 2607, 2614, 2616-17, 2619-20, 2622.

"Mah Rajah Nundcomar", the Nawab later remonstrated to Clive, "my intimate well-wisher, when he has occasion to ask anything, they answer him in the negative and with displeasure. While this man continues in the service, they cannot impose upon me any extraordinary charges. They for the sake of their own profits have censured him with an old accusation, which was long ago strictly examined by General Carnac, and acquitted him of it ; and now they maliciously accused him again and by this means they sent him down to Calcutta with a guard of sepoys". (Sel. Com. Progs., I June 1765).

Although witnesses were actually summoned, the intended trial did not take place. But Nandakumar was not acquitted. He was detained at Calcutta and entirely excluded from the administration.

24. Secret Cons., 25 March, 26 March, 1 April, 1765. (Arz-begi—An officer appointed to receive and present petitions).

25. He was in charge of the Nazim's jagir, the cavalry, topkhana (arsenal) and shagird-pesha (expenses of servants and dependants) of the Nizamat.

26. C.P.C. vol. I, Nos. 2510, 2527, 2539, 2544.

27. Secret Cons., 9 April, 17 April, 22 April, 1765 ; C.P.C., vol. I, Nos. 2623, 2625-28, 2630, 2635-36, 2638.

28. The Court's orders left England in June 1764 and reached Calcutta on 24 January 1765. The Council met on the next day, treated them with

silent contempt by making no allusion at all. More than three months had elapsed, yet the covenants were not signed. In fact, this delay and the subsequent presents reflect light on each other.

29. C.P.C., vol. I, Nos. 2643, 2645-46, 2650-52, 2655 ; Clive's letter to General Carnac, 20 May 1765 (*Malcolm, Life of Robert, Lord Clive*, Vol. II, p. 358).

30. Muchalka—"A written obligation or agreement, a bond, a deed". (*Wilson's Glossary*, p. 348).

Punyaha—The day on which the rent payers assembled and the revenue for the ensuing year was settled.

31. Sel. Com. Progs., I June, 1765.

32. Sel. Com. Progs., 6 June, 8 June, 4 July, 1765 ; C.P.C., vol. I. No. 2667.

33. Sel. Com. Progs., 21 June 1765.

Curiously enough, no comment was made against Governor Spencer who received the sum of Rs. 1,90,000, the second only to Johnstone's.

34. The whole matter was referred to the Directors. According to their orders, based on the opinions of the King's Attorney, Solicitor-General and others, the Select Committee asked the accused gentlemen to refund the money they had unduly obtained from Najm-ud-daulah, Reza Khan and Jagat Seth. (Letter to Court, 30 Sept. 1765 ; Letter from Court, 17 May 1766 ; Sel. Com. Progs., 21 Dec. 1766.)

35. For minutes of Leycester, Playdell, Burdett, Gray, Johnstone, Senior and Middleton, see Sel. Com. Progs., 21 June 1765, 18 Sept. 1765, 16 Jan. 1767 ; Pub. Cons., 7 June, 11 June, 17 June, 1765.

36. Letter to Court, 30 Sept. 1765.

37. Clive's letters to General Carnac, dated 20 May, 27 May, 30 May, 1765, (*Malcolm, op. cit.*, vol. II, pp. 358-361).

A certain clique, it is said, at the head of which was Carnac, was anxious that Nandakumar should replace Reza Khan.

38. Sel. Com. Progs., 21 June, 1765.

39. Sel. Com. Progs., 7 July, 10 August, 1765 ; C.P.C., vol. I, No. 2671.

40. Sel. Com. Progs., 21 June 1765 ; 10 August 1765.

41. According to Clive, the Nawab received with infinite pleasure the proposal of having a sum of money for his personal expenses at his own disposal, and exclaimed, "Thank God ! I shall now have as many dancing girls as I please !" (*Malcolm, op. cit.*, vol. III, pp. 124-125).

But this exultation seems rather inconsistent with the Nawab's demands on Sykes to enhance the proposed allowance as also Sykes' efforts in dealing with him only a few days later.

42. Sel. Com. Progs., 10 August 1765, Letter to Court, 31 Jan. 1766. Actually, Reza Khan alone was entrusted with this responsibility.

The English Government was so satisfied with the negotiations that

Sykes was ordered to give a suitable present to the Nawab.

43. Sel. Com. Progs., 7 Sept. 1765 ; Public Cons., 9 Sept. 1765 ; Letter to Court, 30 Sept. 1765 ; Aitchison *op. cit.*, vol. II, pp. 241-244.

44. *Seir Mutagherin* vol. III, p. 9.

45. Sel. Com. Progs., 7 Sept. 1765 ; Pub. Cons., 9 Sept. 1765 ; Aitchison *op. cit.*, vol. II, pp. 244-245.

The Select Committee could see no reason why the Nawab should not be well satisfied, for a fund was "secured to him without trouble or danger, adequate to all the purposes of such grandeur and happiness as a man of his sentiments has any conception of enjoying ; more would serve only to disturb his quiet, endanger his government" (Letter to Court, 30 Sept. 1765).

CHAPTER II

THE INDIGENOUS SYSTEM OF CRIMINAL ADMINISTRATION

The object of this chapter is to examine the framework, and functioning of the indigenous system of criminal administration of Bengal about 1765. At the outset, it is desirable to refer to the circumstances that went to produce the system as it then obtained in Bengal.

After the defeat of Daud Karrani on 3 March 1575 at the battle field of Tukaroi, Bengal became a Subah of the Mughal Empire and the regular Subah administration was introduced there by Akbar some years later in 1586-87. The Mughal Government was, however, primarily military in nature and did not basically undertake such wide functions as modern Governments do. Justice and police were two weak points in the Mughal system.

With the death of Aurangzeb the imperial authority began to decline. Lawless elements thrived on all sides. Distant provinces began to assert independence. Murshid Quli Khan, who was in 1700 appointed as Diwan of Bengal, soon became the Diwan of Bihar and Orissa and also Naib Nazim of Bengal and Orissa. On the death of Azim-us-Shan and the accession of his son Farrukh Siyar as Emperor (1713), he gained for himself the combined offices of Nazim and Diwan of the three provinces, owing only a nominal allegiance to the Emperor. During the administration of Murshid Quli Khan and his son-in-law and successor, Shuja-ud-din Khan (1725-39), the country flourished.

Thereafter, the marauding activities of the Marathas during the rule of Alivardi Khan and the successive revolutions in the Nizamat of Bengal, which followed in the wake of the battle of Plassey (1757), produced a state of instability. In consequence many abuses crept into all branches of Government.

The criminal administration with every other department fell into a state of disorder. The process of deterioration was also accelerated by the irresponsible way in which the Company's servants exercised power.

During the first administration of Mir Jafar (1757-60), whom the English bayonet raised to the masnad, there was no apparent change in the criminal administration. But the Company's servants, their agents and free merchants who were engaged in inland trade of the country often tended to interfere with the judicature and the Government. Mir Kasim who stepped into Mir Jafar's place on his deposition in 1760, had no leisure to check the encroachments of the English on the judicial administration. Mir Jafar's restoration (1763) added to the power and influence of the English and rendered the administration of justice very liable to be swayed by the Company's servants and their banyans who played the role of petty tyrants. The common people groaned under their oppression. For instance, in March 1764 Senior, the Chief of Kasimbazar, reported the numerous complaints that daily came to him of their extravagance. These agents walked in rags in Calcutta, but when sent out on 'Gomastahship' they lorded it over the country-side, imprisoned ryots and merchants and behaved in the most insolent manner with Faujdars and other officers of the Nazim. Wherever they went, they entirely governed the local courts and frequently sat there as judges.¹

The diversity, corruption and the usurped power of individuals that characterised the administration of this period should be judged in the light of the aforesaid factors. The old machinery of criminal administration was still operating but only as a spent force.

It appears from a Report of the Committee of Secrecy of 1773 that the judicial structure of the indigenous system, both in the capital and in the interior of Bengal, comprised different branches for the exercise of criminal, civil, religious and revenue jurisdictions.²

The criminal court in the mofussil was known as the Faujdari Adalat. The local zamindar,³ says the Seventh Report,

was the judge in this court. His jurisdiction extended to all criminal causes. In case of a capital offence, however, the sentence pronounced by him could not be executed unless confirmed by the Murshidabad Government. The procedure of the criminal court was summary. The imposition of fine was the most frequent punishment, specially in the case of an opulent person. Every fine was appropriated by the zamindar as his perquisite.

The mofussil court of civil jurisdiction went by the name of the Adalat. The local zamindar or the Raja appears to have presided over this court also. He took cognisance of "all causes between party and party". He was entitled to a Chauth or share which amounted to one-fourth or one-fifth of whatever was recovered in his court.

Matters relating to revenue were under the cognizance of a separate court which also used to be formerly presided over by the local zamindar or Raja. But, for some years before the grant of Diwani, the zamindar's place in this court was taken by the Naib Diwan, appointed in every district by the Diwan at Murshidabad. Appeals from the Naib Diwan's decisions lay to the Diwan.

Causes respecting religion, however, were dealt with in a different manner. Questions of this nature were not to be trusted to the sole discretion of any temporal judge whosoever he might be. It is mentioned by the Committee of Secrecy that in a case pertaining to Islamic religion, the judge had to requisition the services of a local Qazi and even to submit to his authority in the decision of that cause. Similarly in the case of the Hindus the judge was assisted by a Brahmin particularly where the cause involved forfeiture of caste. The peculiar punishment of excommunication rendering the offender an outcast from society was considered to be a very severe penalty. The English found it often being inflicted for private pique among Hindus, without a regular process and clear proof of the offence.⁴

The existence of a separate institution called the Caste Kachahri is traceable as functioning in Calcutta even in Verelst's

time.⁵ At that time Maharaja Nabakrishna, banyan to the Select Committee, held charge of this kachahri. This court held jurisdiction over all matters relative to the caste observances of the Hindus. The punishment awarded by it was generally the sentence of forfeiture of caste. A man once made outcast could not, observes Verelst, be restored except "by the general suffrage of his own tribe, the sanction of the Brahmins (who are the head tribe) and the superadded concurrence of the supreme civil power." Verelst cites an interesting case of a Hindu. He had been bribed to procure some papers belonging to a deceased servant of the Company but was caught red-handed by the son of the deceased and was forced, by way of retaliation, to swallow a spoonful of broth. As a result of this pollution he lost his caste and was avoided as a "leper by his tribe."⁶

A letter from Verelst gives us a glimpse of the local courts of Burdwan as they were in 1765.⁷

"Fauzday"—The jurisdiction of this court was wholly confined to criminal matters and the judgement of capital offences.

"Bazee Jumma Duftore"—This court dealt with adulteries, abortions and other offences affecting the peace and happiness of the people. Grants for lands and public works were issued from this court.

"Burrah Adalut"—A court of "meum and tuum" for demands above fifty rupees.

"Chootah Adalut" disposed of suits for debts not exceeding fifty rupees.

"Bazee Zemin Duftore" settled disputes relating to charity lands and other public aids.

"Karidge Duftore"—It dealt with payments of landholders' accounts after settlement of debts.

"Sudder Cutcherry" received the land-rents and revenues, dealt with land-transactions and determined all disputes between the landlord and tenants.

"Ameen Duftore" was concerned entirely with the revenues and the revenue collectors. It was a sort of lower court under the "Sudder Cutcherry".

Verelst mentions another court which in point of fact cannot be regarded as a court of justice. This was "Buxey Duftore." This court superintended the conduct of and made payments to all the forces, guards and other persons employed for the protection in general and prevention of thefts and disturbances of peace.

Verelst's categorical statement that similar courts existed all over Bengal does not bear scrutiny. In the insular pargana of Sandwip in the south east of Bengal, justice was at this period administered by the Daroga. From about the year 1760, this Daroga acted entirely under the authority of the Naib Ahad-dar who used to sit in the Adalat on fixed days of the week. The Daroga and his assistants made the causes ready for hearing. Assisted by the Daroga, qanungo and zamindar, the Naib Ahad-dar determined all cases, civil and criminal. The cognizance of revenue matters rested with the Ahad-dar. In matters of debt this court retained one-fourth of the sum at issue and exacted discretionary fines for theft, dacoity, fornication, assault and the like. Until 1764, it was customary to exact from the parties a fee (Itlak) of one anna and a half per day for the emolument of the Ahad-dar, together with one anna for the peon.⁹ Besides, in a vast area like Purnea there was no regular court of justice before the year 1765.¹⁰ There was not a single Faujdari court before 1776 in the large hill tracts of West Bengal and Bihar known as the Jungleterry districts. These districts were never brought to any regular subjection by the Mughal Government. The zamindars of Jungleterry always considered themselves as supreme judges in all criminal cases and the primitive form of trial by ordeal was in vogue. Their procedure of trials, observes Captain James Browne, was "exactly the same as those of the nations of Europe in their state of barbarism." The accused were confronted by their accusers. If the accusers persisted in making allegations and the accused continued to deny them, the latter were put to the trial of fire and if they escaped unhurt, they were declared to be innocent. This mode of adjudication was practised by every zamindar there over his subjects.¹¹ Thus, forms of justice in the interior of Bengal were characterised by diversity.

There was a difference of opinion among the witnesses who gave evidence before the Committee of Secrecy in 1773 on the question of the right of appeal from the mofussil courts of the first instance to the respective courts of appeal at the capital. Most of them held that appeals from mofussil courts lay at Murshidabad.¹¹ All of them however concurred in the view that the Murshidabad Government exercised a discretionary power over the proceedings of the courts of justice and frequently mitigated or inflicted punishments "without the interposition of any judicature." In describing the indigenous judicial system, Reza Khan stated that an appeal from both Adalat al Alia (court of criminal causes) and Khalsa (court of civil causes) lay to the Sadr "where the cause was ultimately determined."¹² It appears that the process of appeal in those days defeated its own purpose and could really be of little utility to a party unable to purchase the Government's favour and protection. The interposition of the Government from motives of favour or displeasure was "a frequent cause of the perversion of justice."¹³

It is also pointed out by the Parliamentary Committee of 1773, that the custom of levying perquisite as commission greatly affected the confidence of the people in the justice of the civil court (Adalat) and that parties were very reluctant to resort to it and also that it had long, therefore, been a prevailing practice in Bengal to refer civil disputes to arbitrators chosen by the parties concerned. In the opinion of Reza Khan, matters of debt and commercial disputes only were proper subjects of arbitration.¹⁴

The fact that the people of the interior still continued to settle their disputes locally by resort to such indigenous institutions as arbitration, caste courts and the like, is partly attributable to the tenor of the life of village communities and the respect of the Mughals for the same. Little scope was left to the Government for interposition in matters of justice due to (a) the religious character of Hindu and Mahomedan Laws, (b) village organisations which often settled disputes themselves and (c) the close contact with each other among individuals, established by the peculiar nature and needs of society. During

the long rule of the Mughals, no further scope was created for greater Government control over the administration of justice.

But the good old days of the village communities were over. The vigour of the Mughal empire had been irrevocably weakened. The Nawab being unable to maintain the authority of his tribunals beyond the bounds of the city of Murshidabad, regular course of justice in the interior fell into a state of suspension. And naturally this circumstance gave scope to rural personages like Qazis and Brahmins to act as judges without any lawful authority.¹⁵

The role of the zamindar in the indigenous system of justice has been the subject of some controversy. The Seventh Report describes the zamindar as adjudicating in both civil and criminal courts in the mofussil. It also hints that the zamindar's jurisdiction in the courts of justice had a legal basis in the very tenure of his lands. This statement actually represents the Company's earliest conception of the zamindar's duties. It is confirmed by the description of zamindar's kachahri at Calcutta by Holwell and Bolts.

Holwell says that the zamindar acted in two distinct capacities—as collector of revenue and as judge in the 'Court of Cutcherry', which was a tribunal constituted for trial and determination of all matters, both civil and criminal, "wherein the natives only, the subjects of the Mogul, are concerned."¹⁶

According to Bolts also, the zamindari kachahri "or Fowz-dary court" tried criminal offences among "black inhabitants."¹⁷ The zamindari kachahri at Calcutta was presided over by a member of the Council or sometimes by a servant of the Council. Both Holwell and Bolts record that the zamindar tried in a summary way and had the power of inflicting stripes, fine and imprisonment and of condemning culprits to work in chains upon the roads for any space of time, even for life. Only in capital cases, the zamindar was required to obtain the President's permission before the sentence was executed.

As zamindar of the three towns of Sutanuti, Calcutta and Govindapur, the Company acquired "criminal, civil and religious jurisdiction" over them. This they exercised through a

number of courts,¹⁸ namely, the Faujdari Court for trial of crimes, the 'Court of Cutcherry' for civil causes, the Collector's Court for matters of revenue, and a Caste Kachahri for taking cognisance of all matters relative to the castes of the Hindus.

The accuracy of the Committee of Secrecy's statement as to the zamindar's judicial authority was, however, seriously disputed by no less a person than Hastings. Speaking on the authority of the Seventh Report, the three Councillors—Francis, Clavering and Monson contended that the zamindar's jurisdiction in the Faujdari court formed "an essential part of the Constitution" of Bengal and that the zamindar presided over the local criminal court, pronounced and executed sentences on all offences less than capital.¹⁹

On the other hand, Hastings asserted, "I venture to pronounce with confidence that by the constitution of Bengal the zemindar neither presided in the criminal court of his district, nor pronounced nor executed sentence on all offences less than capital."²⁰ A zamindar held his official title by a Sanad or Charter which set forth the character and responsibilities of his position. Only one zamindar, Raja of Burdwan, was, as Hastings pointed out, allowed to exercise judicial authority by a special Sanad from the Nazim. If, argued Hastings, judicial authority were inherent in the institution of zamindars, this special Sanad would have been unnecessary.²¹ He also referred to a letter of the Committee of Circuit of 1772, which contained in his opinion "a just accurate description of the modes of administering justice which had been established under the Mogul Government."²² This letter enumerated among prevailing evils the usurpation of judicial power by zamindars and farmers.²³

It is to be noted that while the Committee of Secrecy recorded the information which was sent to them, the Committee of Circuit's statement was based on direct observation of the actual conditions in Bengal. Moreover, Hastings in his early career in this country as the Resident at the Durbar happened to acquire a better knowledge of the Bengal Government than his opponents.

His views were perfectly correct so far as the position of the zamindar in the Mughal Constitution was theoretically concerned. If the Sanad is to be considered the warrant of exact authority, as it should be, the texts of zamindari Sanads hardly support Francis's contention that the zamindar was the judge of the criminal court. Yet the zamindar being required by his Sanad "to employ himself diligently in expelling and punishing the refractory,"²⁴ it may be argued that this authority to punish is impliedly a judicial authority. In fact, the distinction between the two is so very nice as might be easily ignored in actual practice. It should also be remembered that in times of general uncertainty and confusion, theory and practice are frequently at odds with each other.²⁵

Hence, whatever might have been the *de jure* position of the zamindars, we find them as *de facto* dispensers of civil and criminal justice on the disruption of the Mughal Government.²⁶ Francis himself revised his opinion later on. When asked by the Select Committee of the House of Commons in 1782, he admitted that the result of later enquiries had "in some degree, satisfied him that whatever criminal jurisdiction was exercised by the zamindars, it did not go much beyond petty offences." He believed that it did not extend to life or limb. On this subject, however, he did not presume to speak positively.²⁷

The zamindars were first and foremost collectors of revenue and additionally police magistrates. For good or for evil, they were intimately linked up with the rural folk. Many of them appear to have been *de facto* heads of villages provided that they paid their revenue. With the weakening of the Murshidabad Government, the power of Faujdars who used to formerly exercise check on zamindars deteriorated and zamindars came to be very much left to themselves. On their part they were ever ready to take advantage of any weakness or relaxation of the bonds of authority.

It is in this background that we actually find the zamindar as the single person adjudicating in matters civil, criminal or otherwise. Thus, in the interior, complaints were frequently preferred before the zamindar's courts and a sharp and summary

justice was administered there. Zamindars, farmers, shikdars and other officers of revenue are, therefore, rightly described by the Committee of Circuit as "assuming that power for which no provision is made by the Laws of the land, but which, in whatever manner it is exercised, is preferable to a total anarchy."²⁸

The judicature at Murshidabad had a more specific framework and as surveyed by the Committee of Circuit in August 1772, a good many judicial officers were in existence there to perform varied functions. They were the Nazim, Faujdar, Kotwal, Darogha-i-Adalat-al Alia, Diwan, Darogha-i-Adalat-Diwani, Qazi, Muhtasib, Mufti and Qanungo.²⁹

A close examination of their functions will show that their occupations pertained more to general administration than to the administration of justice in the modern sense of the term. The Committee undertook the survey on the plain principles of experience and observation without making an intimate study of the judicial framework of the Mughals and the theory of their law.

At the top was the Nazim, also styled as Sipah Salar or Subahdar. In the words of Abul Fazl, he was "the vicegerent of His Majesty." "The troops and people of the province are under his orders and their welfare depends upon his just administration." It was his duty to administer criminal justice and maintain law and order. In his judicial capacity, it was incumbent on him to expedite judicial procedure and avoid dilatoriness. He was not to rely on witnesses and oaths but to investigate the matter personally and to treat the parties with courtesy.³⁰ In awarding punishments, he was to be forgiving and mild and to discriminate between persons of different status.

This is to be considered as an ideal from which deviations were frequent even when the Mughal administration was most solidly established in Bengal. The Mughal Emperor loved to pose as the fountain of justice and followed the immemorial tradition of doing justice personally and in the open court. That form was preserved by the Nawab Nazim of Bengal as the executive head of the Subah. But for some years before

the grant of Diwani, the Murshidabad power had been considerably weakened. Formerly, the Nawab's deputy on the civil side, the Darogha-i-Adalat-al Alia used to function as the judge over property, real or personal, but his court was now reduced to a dumb show. The Nawab Nazim still held on every Sunday a court called the Roz Adalat³¹ and personally presided over it. But he now sat there only to preside in the trials of capital crimes.³² Over other matters he did not practically exercise any jurisdiction at all. The Naib Nazim of Dacca took cognisance of criminal cases there.

The Faujdar held the first place "as a subordinate and assistant" of the Nazim. The duties enjoined on him in the *Ain-i-Akbari* related broadly to three branches of administration : revenue, police and army. His main function was to guard the countryside and put down robberies and small rebellions. He was expected to keep the local militia well-equipped and in good trim. Another duty of his was to assist the Amalguzars in the realisation of revenue by making demonstrations of force to overawe all opposition to them.³³

Mughal historians do not attribute any judicial function to the Faujdar. It appears, however, from a letter of the Committee of Circuit that crimes, not capital, were "tried before the Faujdar, but reported to the Nazim for his judgment and sentence."³⁴ This statement as quoted by the Parliamentary Committee of Secrecy of 1773 has since then intrigued many persons including the gentlemen in the majority in Hastings' Council. The similarity of the two terms—Faujdar and Faujdari Adalat further confused these gentlemen. In course of a controversy in the Council, Hastings made it clear that Faujdari Adalats were courts for the trial of all crimes and misdemeanours, while Faujdars were police officers entrusted with the maintenance of the public peace. They arrested all disturbers of peace, but instead of trying and punishing them, committed them to the Faujdari Adalats for trial. This transfer was, in his opinion, the only connection between the Faujdars and the Faujdari Adalats, "their proceedings and their authority being totally distinct and independent."³⁵ Properly speaking,

the Faujdari Adalat was the single judicature for the trial of criminal matters.

Subordinate to the Faujdar, the Kotwal was ranked as a peace officer of night. P. Saran's statement that he was a magistrate, prefect of police and municipal officer rolled into one and that as magistrate, he took cognisance of criminal causes of the whole Sarkar, is not borne out by facts. In Bengal at least, Kotwal was essentially an officer of city police and not a judge.³⁶ Describing a Bengali Kotwal towards the middle of the 18th century, Robert Orme states that the Kotwal's duty was to punish all such crimes and misdemeanours as were too insignificant to be admitted before "the more solemn tribunal of the Durbar."³⁷

By virtue of local influence and police powers, the Kotwal could easily wield coercive authority. It may be conceded also that he dealt with trifling offences. But in those cases, his role might have been of the nature of an informal mediation often exercised by the important persons of the locality. It cannot be satisfactorily proved from the contemporary records that the Kotwal in Bengal had any judicial power.

There were three courts at Murshidabad for the decision of civil causes, namely the Adalat-al-Alia, Adalat Diwani and the Qazi's Office. The highest authority in the branch of civil justice was the Diwan, the head of the finance department. He was supposed to be the chief judge of all causes relating to real estates or property in land.³⁸ In practice, however, he used to delegate his powers to his deputy, the Daroga³⁹ of the Diwani Adalat to whose jurisdiction, therefore, appertained the disputes over property in land.

For many years past, the Darogas of the Adalat-al-Alia and the Diwani Adalat were considered as judges of the same causes. The Daroga of the Adalat-al-Alia, who was the deputy of the Nazim, was the judge not only of quarrels, frays and abusive names but also of all matters of property, except claims relating to land and inheritance. His jurisdiction was thus hopelessly confounded with that of the Diwani Adalat and the parties "made their application as chance, caprice, interest, or

superior weight and authority of either, directed their choice."⁴⁰ But the Committee's remark that "the general principle of all despotic Governments that every degree of power shall be simple and undivided seems necessarily to have introduced itself into the courts of justice" is difficult to accept without some modification.

It was in conformity with the traditions of the Mughal system of administration that there were two co-ordinate channels of justice in the Subah. The Nazim was in charge of the administration of criminal justice while the Diwan was the highest judge in civil and revenue matters. Both of them were appointed by the Emperor. But since the days of Murshid Quli Khan, the office of Diwan became directly subordinate to the Nazim, who used to appoint the Diwan, Naib Nazim and Naib Diwan according to the needs of administration and these offices were constantly filled by the nominees of the reigning Nazim with the result that the distinct line between the Nizamat and Diwani was hardly maintained.

The Qazi was a judge for claims of inheritance and succession and a dignitary performing weddings, funerals and other rites—thus combining in his person the temporal and the spiritual, at once a layman and a religious personage. In theory, the Qazi must be a Muslim scholar of blameless life, thoroughly conversant with the Quranic law. His judgment was decisive for the parties, there being no appeal from it.⁴¹ Appointment of Qazis was not restricted to the capital only ; a network of Qazis was spread over the parganas. Every town and even a large village had its local Qazi appointed by the Chief Qazi.⁴²

Qaziship was often recognised as a hereditary source of subsistence rather than a public post of responsibility. It appears that Abdul Reza Khan who had been appointed during the regime of Emperor Aurangzeb as the Qazi of Murshidabad was succeeded by his relative Zaid Muhammad who died in the time of Mir Kasim. In the absence of any heir for the time being, the relatives of the late Qazi deputed Mullah Wofa, one of their dependants, to act as Qazi "till heirs should arrive." But the latter usurped the office of Qazi in his own name. The daughters

of Abdul Reza Khan made a petition in January 1771 so that Mirza Abdullah, the nephew and the lawful heir of the late Qazi Zaid Muhammad might be appointed Qazi. The Naib Subah corroborated this statement and the Murshidabad Council accordingly recognised "the right of Mirza Abdullah to succeed to the Cazeeship."⁴³

The Qazi was assisted by the Mufti and Muhtasib in his court. It was the Mufti's function to give fatwa or legal opinion and the Qazi's to pronounce judgement. They were to be unanimous in their judgement. If either the Qazi or Muhtasib disapproved of the Fatwa, the cause was referred to the Nazim, who summoned the Ijlass or general assembly consisting of the Qazi, Mufti, Muhtasib, Darogas of the Adalats, Maulavis and all the learned in the law, to meet and decide upon it. Their decision was final. This provision shows that the Qazi's court was formed on more liberal "ideas of justice and civil liberty than are common" in despotic governments.⁴⁴

In reality, however, the intention of this reference was defeated by the over-emphasis laid on it and the insurmountable difficulties attending the use of it. Very few were the occasions when the decisions of the Qazi and his colleagues were found to concur ; there was, therefore, a standing necessity either that one should overrule the other two, which was undesirable, or that daily appeals must be made to the Nazim and his warrant issued to summon all learned in the law from their homes, their studies, and necessary occupations "to form a tumultuous assembly to hear and give judgment." The consequence was that the general assembly was held rarely and only on occasions which acquired "their importance from that of the parties, rather than from the nicety of the case itself." Hence, the usual practice was that the Qazi either consulted with his colleagues in his own particular court and gave judgement according to his own opinion, or more frequently decided without their assistance or presence.⁴⁵

As an assistant of the Qazi, the Mufti expounded and applied the law to cases. Originally he was a sort of unofficial Legal

Remembrancer of Canon law. Probably his was never a regular post in the judicial department though references to Muftis are of frequent occurrence in connection with judicial administration.⁴⁶

The Muhtasib had cognisance of drunkenness, the vending of spirituous liquors and intoxicating drugs and the examination of false weights and measures. He also figured in the Committee of Circuit's list as an assistant of the Qazi. But properly speaking, he cannot be held as a judicial personage nor does his original counterpart in the Muslim world, even from the days of the Khilafat, claim that title.⁴⁷

Another officer mentioned by the Committee of Circuit was the Qanungo. He was the Registrar of lands. Although he was not vested with any judicial authority, he was often made arbitrator in matters of land disputes when reference was made to him from the court of the Nazim or Diwan.

Obviously, the judicial officers at Murshidabad, as listed by the Committee of Circuit, ranged from the equivalent of the modern Chief Justice to that of the Registrar of lands and marriages and included the Police Chief, Justice of the Peace, Legal Remembrancer and judges or magistrates in civil, criminal and municipal matters. Three of them at least, the Faujdar, Kotwal and Qanungo had no regular judicial power.

The state of judicial administration of this period revealed much laxity. Both civil and criminal courts frequently took cognizance of the same causes. Overlapping of functions in the same officer was a cardinal feature of the criminal administration of Murshidabad.

The Qazi's court seems to have been formed on wise and liberal principles, but the way in which it was then actually conducted destroyed all hopes of fair justice. The Qazi was to enforce the ordinances of law without partiality or pity. He was forbidden by the law to take presents from the people who appeared in his court ; "but now", writes the contemporary author Ghulam Husain, "since from a length of time, it is become customary to put up everything to sale, the office of Cazy is leased out and underleased."⁴⁸ The fees of the Qazi and

Musti always proved a heavy burden on the poor. On receiving a suitable fee, the Qazi used to "turn right into wrong and injustice into justice".⁴⁹

Judges were not paid any fixed salaries. They derived their emoluments from fines and recognised perquisites. The authorised exaction of the Faujdari Bazi Jama or fines for petty offences and the commission of one-fourth called the Chauth levied on the amount of all debts and on the value of all property recovered by the decree of the court were not only obnoxious practices in themselves, but constituted an additional incentive to bribery and oppression.⁵⁰ The wealthy culprits, even if guilty of capital offences, could always escape due punishment through agreement by fine and the decision of the judges was in most cases "a corrupt bargain with the highest bidder."⁵¹

Here is an instance of the corrupt practices prevailing in these courts. One day, Muralidhar, an agent of Raja Shitab Ray, was trying a case in his court, where the author of *Seir Mutagherin* and Rumbold, Chief of Patna, happened to be present. The sentence was pronounced and both the parties were ordered to pay some money, the guilty by way of fine and the innocent by way of thanksgiving. Rumbold was astonished and asked why fine should be levied also on one who had right on his side. Muralidhar and his flatterers had a ready reply to this query. They declared that the decision was no innovation of their own—it was in consonance with the laws and customs of the country.⁵²

One fruitful source of the maladministration of justice was the absence of register of the proceedings of the mofussil courts. This made the judge "easy with respect to any future prosecution" by a superior authority on a review or retrial of the cases and naturally lent countenance to bribery and fraud.⁵³

But the greatest defect of the existing courts was the want of a substitute or subordinate jurisdiction for the dispensation of justice in such parts of the province as lay out of their reach. In consequence, the operation of the Murshidabad courts was limited to a circle, comprising a very small area just round the capital. In the interior, only those who lived in the neighbour-

hood of the zamindari headquarters could avail themselves of the zamindari courts. Even in their case, the expenses attending suits in these courts served to destroy their hopes of legal redress. As for the people of the remote interior, it was only the rich and the vagabond who could travel far for justice. If a poor person was brought from a distant village to answer a complaint and await the tedious process of the court, he was liable to be ruined by the expenses of the journey and the neglect of his normal occupation during the pendency of the suit. The consequence would certainly be more oppressive than an arbitrary decision could be, if passed against him, without any legal process whatsoever. "Much these poor wretches will bear", remarked Becher, "rather than quit their habitations to come here to complain."⁵⁴ On the other hand, the principal delinquents could seldom be brought under the authority of these courts. If at all they submitted to them, it was only to defeat the ends of justice by means of their influence with the Government officers.⁵⁵

The majority of the inhabitants, the non-Muslims, were excluded from all share in the public administration of justice which was jealously guarded by the Muslim Government.⁵⁶

Since the occupation of the country by the Muslims, the Quranic Law had been the "standard of judicial determination" in both civil and criminal courts. No deviation from the Quranic law was allowed except in cases where it afforded no rule of decision. In that case, the ancient customs and usages, if applicable, were resorted to.⁵⁷ But if the Hindus without repairing to regular courts obtained an adjustment of their difference among themselves in accordance with their own particular laws and customs, it was not the "business of the Magistrate to interfere."⁵⁸

Islamic Law recognises three categories of crimes : offences against God, the State and private individuals. Punishments also may be classified under three heads, namely, Hudd, Qisas with its appendage Diyat, and Tazir and Siasat.⁵⁹

Hudd or prescribed penalty means a punishment specified by the Quranic Law. It is considered as the right of God,

which no man can alter. Its original purpose is to deter people from commission of certain offences. These are highway robbery, theft, drinking wine, adultery or fornication, apostasy, slander of adultery and robbery with murder.

Qisas or retaliation represents a right of man. This is the personal right of the victim or his next of kin to determine the form of punishment in the cases of certain heinous offences against the person, including homicide, maiming and wounding. The judge is bound to inflict the legal punishment if the injured party so desires. Diyat (Arabic Diya) or price of blood is a penalty prescribed for mitigated forms of homicide and wounding. In certain circumstances, the aggrieved party can pardon the offender unconditionally or can be satisfied with the compensation or price of blood paid by the latter. In that case, the judge of the Canon law and even the executive head of the State cannot take any other action. Curiously enough, manslaughter is not a violation of God's Law or King's Peace, but only an injury to the victim's family.⁶⁰

The extreme rigour of the law of evidence and many scrupulous distinctions frequently bar the conviction of an offender deserving Hudd or Qisas. The Mahomedan Law meets this difficulty by vesting in the Sovereign or his delegate the power of sentencing criminals to Tazir and Siasat or discretionary correction and punishment.

Tazir in its primitive sense means prohibition or restriction. It is legally defined to be a punishment (Akubat) not prescribed by any fixed rules of law, but left to the discretion of the judge for the ends of public as well as private justice. It is incurred by any offence, in words or deed, not subject to a specific legal penalty. Though allowed as a private right also, it cannot be inflicted without a judicial sentence. Tazir includes admonition, public exposure (Tashhir), temporary sequestration of property, scourging, imprisonment and even capital punishment. Tashhir is widely applied. The culprit's head is shaved. He is besmeared with lime or dust with his face blackened and then seated on an ass to be paraded round the streets. Siasat literally means protection. This word is used to denote exemplary

punishment extending even to death, which may be considered necessary for the protection of the community from the atrocious and incorrigible criminals. Both Tazir and Siasat can be inflicted in all cases where the presumption of guilt is strong.

Of the pernicious practices which, sanctioned by the Islamic Law defeated the ends of justice in Bengal, the most remarkable were (*a*) the privilege granted to the next of kin of the murdered to pardon a murderer unconditionally or to compose the injury by receiving money damages, (*b*) the barbarous punishments like mutilation or impalement and (*c*) the infliction of fine, instead of capital punishment, for murder with an instrument not formed for shedding blood.⁶¹

It also frequently happened that the profession of Law was in the hands of men who derived "their knowledge by inheritance" or possessed it "by intuition, without any previous study or application."⁶²

It has already been noticed that among the officers mentioned by the Committee of Circuit, only two—the Faujdar and Kotwal were responsible for the policing of the capital.

In the organisation of police, the Faujdar was next in rank to the Nazim. In describing the constitutional powers of the indigenous Faujdari system, Hastings stated that the preservation of peace first and foremost belonged to the Faujdar who was the representative of the Nazim. To him the people looked up for protection. He served as a check even upon the zamindars.⁶³ He held jurisdiction over a large area sometimes comprehending many zamindaris. This area was divided into thanas or inferior stations which were under the charge of officers called thanadars. His force consisted of a contingent of armed police and a part of the land servants of each zamindar. Its number varied according to the exigency of each place.⁶⁴ The provinces of Bengal and Bihar were divided into ten and eight Faujdari districts respectively. In each of these districts a Faujdar was stationed at the head of a body of 500 to 1500 sepoys and a proportional number of the staff. The Faujdari districts of Bengal were Islamabad (Chittagong), Sylhet, Rangpur, Rangamati, Castle of Jalalgarh—Purnea, Rajmahal—Akbarnagar,

Rajshahi, Burdwan, Midnapur and Hugli. Jahangirnagar—Dacca had a Naib Nazim of its own, with a suitable number of officers. The eight districts of Bihar were Shahabad, Rhotas, Monghyr, Bihar, Champaran, Saran, Tirhut and Hajipur.⁶⁵

The Kotwal was the Faujdar's chief executive assistant in the town. The *Ain* gives a full account of the police functions of the Kotwal. Through his watchfulness and night patrolling, the citizens were expected to enjoy the repose of security. He was to keep a register of roads and houses. It was his duty to receive with the aid of intelligent detectives a daily report about those who arrived at or left the city. He was enjoined to forbid anyone from forcible intrusion into another's house and to find out the thieves and the stolen goods, and was answerable for the loss. When night was a little advanced, he was required to prohibit people from entering or leaving the city.⁶⁶ The Committee of Circuit noticed the Kotwal as discharging police functions at night only.⁶⁷

In the rural areas, there was another powerful functionary for law and order under the Mughal system of police, which was built on the basic principle of local responsibility. Every zamindar was responsible to the Government for the security of person and property within the extent of his zamindari. This was an essential condition of his tenure. To quote a Sanad, he was bound to "exert his utmost endeavours that no trace of thieves, robbers and disorderly persons may remain within his boundaries ; take special care of the high roads, so that travellers and passengers may pass and repass in perfect confidence and, if at any time the property of any person shall be stolen or plundered, that he produce the thieves and robbers together with the property ; and delivering the latter to the owner, consign the former to punishment ; that in case he do not produce them, he himself become responsible for the property."⁶⁸

Thus, the zamindar was held responsible for the prevention of theft and robbery, apprehension of criminals and restoration of stolen property. In case he failed to restore the stolen effects, he was himself to make good the loss.⁶⁹

In the exercise of his police functions, the zamindar acted only as the subordinate instrument of a larger system. His duty was to give constant intelligence to the Nawab through the Rai Rayan and to assist the Faujdar with all his resources in the apprehension of robbers and in executing the orders given by the Faujdar for maintaining law and order. His land-servants were distributed throughout his zamindari. A part of them was always employed to assist the Faujdar. The rest enabled the zamindar not only to make collections, but also to guard the villages.⁷⁰

The zamindari servants, employed wholly or in part, on police duties may be divided into four categories as follows :—⁷¹

- (i) the village staff including the village watchmen,
- (ii) the frontier Police of a military character,
- (iii) the regular Police force for internal disorders,
- (iv) the personal guards.

The village staff consisted of officers of different grades. The dual character of the zamindar as the collector of revenue and police magistrate applied to them also. Their main business was the collection of rents. The police duties were subsidiary and generally neglected. They passed under different names in different parts of the country. For example, the village watchmen were variously known as Pasbans, Kotalis, Goraits, Barahils, Paiks, Nigahbans and so on.⁷² In Bengal, as in most parts of India, the village communities were held in ancient times responsible for offences committed within their limits. The village Police started as an organ of the village community and the watchman was, therefore, originally responsible to and maintained by the village community to which he belonged. He was generally supported by an assignment of land, composed of small parcels and made over to him free of rent. In the organisation of the Mughal Police it was the zamindar who was held responsible for crimes within his jurisdiction and the village watchmen also merged in the zamindari establishment.

Besides this standard establishment, the zamindars of the frontier districts of West Bengal had at their disposal large bands of servants of a military character, mainly for purposes of

aggression and defence and only incidentally for the suppression of internal disturbances. These were the Ghatwals of Ramgarh, Birbhum and the Jungle mahals, the Sowars and Paiks (horse and foot) of Midnapur and Cuttack and the Nugdees of Burdwan. The zamindars of Nadia, Burdwan, Birbhum and Murshidabad maintained also a regular police force, known as the Thanadari Police. Lastly, there were the barkandazes kept up by the zamindars as personal guards.

The efficiency and solidarity of the police system of the Nawabs rested on the harmonious working of the two wings of law and order—Faujdar and zamindar. In times of stable government the Nawabs of Bengal had often effectively controlled the police functions of zamindars by means of Faujdars, and punished the delinquents. As the hold of the Nawabs upon the country became relaxed, the power of Faujdars naturally deteriorated and it came to be well nigh impossible to co-ordinate the functions of the Faujdars and zamindars. Zamindars of this period appear to have performed their police functions most indifferently. By collusion with those very dacoits and other criminals whom it was their special duty to apprehend, the powerful zamindars exploited the helplessness of the Nizamat and the lesser zamindars purchased their safety. Thus, practice was far from theory and the official Sanads entrusting the zamindars with police responsibility lost all relation to facts.⁷³

For centuries the people in the Junglemahals of West Bengal and Bihar and in the riverine districts of East and South Bengal lived under conditions in which the Mughal Government failed to enforce general obedience to the law. Far from the capital city they frequently repudiated their allegiance to the Government and their Chiefs set up themselves as independent rulers. In particular, the Junglemahals never acknowledged the authority of the Mahomedan Government. Having for years carried their depredations with impunity, the inhabitants thereof used to regard robbery and murder scarcely criminal. The waterways of Bengal always afforded dacoits easy means of escape from the hands of justice. During the rainy season, much of the country

was a sheet of water. On land, the criminal could be easily tracked down, but amidst the innumerable rivers with their net work of channels and swamps, a dacoit had only to step into a boat with his plunder and vanish at a moment's notice leaving no trace of his movements.

Now with the weakening of the Nizamat, the situation grew worse. The persistent non-co-operation of the zamindars with the official machinery and their alliance with notorious criminals paralysed the police organisation of Bengal and encouraged the lawless elements of the State. The Maghs raiding the coastal districts of Chittagong and Noakhali, boats full of kidnapped girls and boys sailing towards the slave markets of Sandwip and Chittagong, the turbulent Chiefs of Junglemahals and their tenants ever in arms, and professional dacoits going about all over the country in large organised gangs—this was Bengal when Najm-ud-daulah became the Nazim and the East India Company the Diwan.

References

1. Secret Cons., 7 May 1764 ; Letter to Court, 1 Feb. 1766 ; Sel. Com. Progs., 19 May 1766 ; Verelst, *A view of the Rise, Progress and Present State of the English Government in Bengal*, p. 49 ; Letter from Court, 10 April 1771 ; Keir's evidence, Seventh Report, 1773, pp. 325-26.
2. Seventh Report, 1773, pp. 324-25.

This Report is also known as Sixth Report. In the edition of the Committee of Secrecy's Reports published by the House of Commons, this particular Report comes seventh in serial order. The First Report of this series is omitted in the publication sold by T. Evans of No. 54, Pater-Noster Row, London in 1773. As such in Evans's publication, the Seventh Report comes serially to be the sixth.

The Committee of Secrecy enquired first into the ancient constitution of judicature in Bengal during the "vigour" of the Mughal Government ; then they traced the alterations which were gradually introduced in the indigenous system by "the influence or authority of the Company or its servants."

3. The zamindar is a general term which was applied to landholders and tenure-holders of several kinds and represented different degrees of status. Generally speaking, the zamindars of Mahomedan Bengal were contractors for land-revenue, though in point of fact the internal administration of their zamindaris was left largely in their hands and so long

as they were regular in their payments they were not interfered with. They had to pay revenue, excise and trade duties to the Nawab's officers. They were also held responsible for the maintenance of law and order within the precincts of their zamindaris.

4. Seventh Report, 1773, p. 324 ; Sel. Com. Progs., 16 Aug. 1769.
5. Bolts, *Considerations on Indian Affairs*, p. 83 ; Verelst, *op. cit.*, pp. 27-29.

6. Verelst, *op. cit.* p. 142.

7. Verelst, *op. cit.*, Appendix, pp. 219-20.

Verelst was the Chief of Chittagong and later on of Burdwan, before he became the Governor of Bengal (1767-69).

8. Duncan's Report on Sandwip, 1778. For relevant extracts, see Noakhali District Gazetteer, pp. 27-28. Ahad-dar was an officer of the provincial government and a sort of contractor for the revenue of a district.

9. Progs., C.C.R. Murshidabad, 13 Dec. 1770.

10. Rev. Dept. I. O. Copies, 20 Feb. 1776, see the letter of Browne who was sent to occupy and later on was in charge of the Jungleterry districts. A Faujdari court was first established in 1776 after Browne's reduction of Kharagdiha and Kharagpur in Jungleterry (C.P.C., Vol. V. No. 4)

11. Seventh Report, 1773, p. 324.

12. Secret Cons., 13 March 1775 ; C.P.C. Vol. IV, No. 1662.

13. Seventh Report, 1773, p. 324.

14. Progs., C.C.R., Murshidabad, 6 April, 1772.

It was further observed by Reza Khan that the arbitration could not satisfy the general body of inhabitants and it was not universally adopted : "otherwise even now", wrote he, "all causes which can be decided by this mode, if the parties consent, are referred to Arbitrators, and many who are not litigiously disposed, without preferring any complaints, or repairing to the court of Adawlut, appoint Arbitrators themselves (to) decide their dispute."

15. Sel. Com. Progs., 16 Aug. 1769.

It was to check this evil that the Select Committee at Fort William directed the Supervisors to require all officers of justice as also Qazis and Brahmins administering justice in every village and town, to produce and register their Sanads.

As Dow puts it, "every Mahomedan who can mutter over the Coran raises himself to a judge, without either license or appointment ; and every Brahmin, at the head of a tribe distributes justice according to his fancy." (Dow, *op. cit.*, Vol. III, p. civ)

16. Holwell and friends, *India Tracts*, pp. 177-78.

17. Bolts, *op. cit.*, pp. 80-81.

Bolts' description of the Calcutta kachahris makes an interesting

study, although his work, in general, must be handled with caution as coming from an exceedingly biased source.

18. There were also other courts in Calcutta, established by the Charter of Justice granted by the English Crown in 1753. These were the Mayor's Court, Court of Appeals, Court of Requests, Court of Quarter Sessions.

19. Secret Cons., 18 Oct. 1775.

Another source of their observation was a minute of Hastings and Barwell which they misconstrued. "It might possibly", they argued, "be supposed that the materials on which the Committee (of Secrecy) formed this part of their report were defective if we did not find their representation confirmed by that of Mr. Hastings himself. We beg leave to refer the Court of Directors to his minute entered on the consultation of the 22nd of April last, containing a proposal for a new settlement." In the 15th article of the aforesaid plan, Hastings and Barwell actually affirmed that the Faujdari jurisdiction was inherent in the zamindar "agreeable to the old constitution of the Empire." (Secret Cons., 7 Feb. 1776).

In clarification, Hastings said that the Faujdari jurisdiction which was recorded by himself to be inherent in the zamindar had "no affinity with the judicial authority, but meant only the authority vested in the Zemindar, to guard and maintain the peace of the Country." (Secret Cons., 29 May 1776).

20. Secret Cons., 7 Dec. 1775.

21. *Ibid.*

Thus Hastings put it at a later date, "the Zemindar of Burdwan had the entire management of the Revenues and the whole civil and criminal jurisdiction within the limits of his Zemindary and as I am informed, an exemption from the Fougedarry authority or rather the right of executing that authority himself was purchased at different times from the Government." (Rev. Cons., 29 May, 1775).

For another reference to the Burdwan zamindar's judicial authority, see Long, *Selections from unpublished Records of Government for the year 1748 to 1767 inclusive*, vol. I, p. 511, No. 956.

22. Secret Cons., 29 May 1776.

23. Progs. Com. of Circuit, Kasimbazar, 15 Aug. 1772

In their review of the different officers of justice formerly instituted in these provinces, the Committee of Circuit mentioned Nazim, Diwan, Darogha-i-Adalat-al Alia, Darogha-i-Adalat-Diwani, Faujdar, Qazi, Muhtasib, Mufti, Qanungo, Kotwal. But the omission of zamindar is significant.

24. Translation of a Sanad under the seal of Serfraz Khan, Diwan of the Subah of Bengal, dated the 27th of Ramzan in the 17th year

of the reign of His Majesty Mohammad Shah or A.D. 1735-36 (Firminer, *Historical Introduction to the Bengal Portion of "the Fifth Report,"* 1812, pp. xlvi—xlviii).

25. "In the general absence of law and order," says Monckton-Jones, "vagueness gave prospect to the ambitious or dexterous which often proved more valuable than the problematical protection which rigid definition might afford." (*Warren Hastings in Bengal,* p. 12).

26. For instance in Sandwip, the Naib Abad-dar was assisted by the zamindar in his judicial business. (Duncan's Report, quoted in Noakhali District Gazetteer, pp. 27-28).

Zamindars of Jungleterry used to try criminal offences in a crude process. (Rev. Dept. I. O. Copies, 20 Feb. 1776).

At Nator, the remains of a jail and a spot where the gibbet had stood serve to attest the exercise of criminal jurisdiction by the zamindars of Rajshahi. (*Calcutta Review*, Vol. 56, 1873, p. 19 : "The Territorial Aristocracy of Bengal" by Kissory Chund Mitra.)

27. Sixth Report from the Select Committee, 1782, p. 11.

28. Progs. Com. of Circuit, Kasimbazar, 15 Aug. 1772, Vols. I-III, p. 120.

29. Letter from the Committee of Circuit at Kasimbazar to the Council at Fort William in Progs., Com. of Circuit, Kasimbazar, 15 Aug. 1772, Vol. I-III, pp. 118-123 ; Secret Cons., 21 Aug. 1772 ; Letter to Court, 3 Nov. 1772 ; Seventh Report, 1772, p. 325.

30. Jarrett. *Ain-i-Akbari*, vol. II p. 37.

"Beware lest justice to that judge belong,

Whose own ill-deed hath wrought the suppliant's wrong." (*Ibid.*, p. 38).

31. "Roy" in the Seventh Report but "Roz" in the Committee of Circuit Proceedings of 15 Aug. 1772.

32. In a memorial Reza Khan too stated that trial of capital crimes belonged to the Nizamat. See Progs. C.C.R. Murshidabad, 3 Dec. 1770, Vol. II, pp 8-9 ; *ibid.*, 11 Feb. 1771, Vol. III, pp 160-61 ; Secret Cons., 17 Jany. 1771.

33. Jarrett, *op. cit.*, vol. II, pp. 40-41.

Faujdar, as his name suggests, was essentially a Commander of Military Police.

34. Progs. Com. of Circuit, Kasimbazar, 15 Aug. 1772.

This specification calls for some explanation. It has led many persons to believe that the Faujdar exercised judicial authority. But at a time when a feeble Nazim held a court once a week only to try capital offences and his deputy, Darogha-i-Adalat-al Alia existed but in name, how could a direct subordinate of the Nazim, like the Faujdar, possibly usurp judicial power ?

A far more plausible explanation of the Committee's statement is that in those days the term Faujdar was loosely used to mean also judge of the Faujdari Adalat, though the two were distinct entities. It should be noted that the withdrawal of Faujdars in 1770 and again in 1781 did not in any way interrupt the operation of the Faujdari Adalats and the term Faujdar also did not go into disuse, for the Daroga of the Faujdari Adalat often used to pass by that name. Not to speak of others, even Hastings was misled by the similitude of the two terms when he wrote,

"For ease the harassed Faujdar prays,
When crowded courts and sultry days
Exhale the noxious fume,
While poring o'er the cause he hears
The lengthened lie and doubts and fears
The culprit's final doom".

(Monckton—Jones, *op. cit.*, p. 310, foot-note).

35. Secret Cons., 7 Dec. 1775.

P. Saran wrongly says that towards the close of the 18th century the Faujdar came to have judicial authority over all cases less than capital crimes and refers to the Seventh Report in support of his statement. (*Provincial Government of the Mughals*, p. 353, foot-note)

36. P. Saran (p. 352) holds that Kotwal and Qazi in the main shared almost the whole business of the Sarkar between them. J. N. Sarkar's opinion is that the Kotwal was an urban officer, being the Chief of City Police.

(J. N. Sarkar, *Mughal Administration* p. 57).

37. Orme—*Historical Fragments of the Mughal Empire*, p. 452.

38. In Reza Khan's opinion all questions of inheritance of lands or relating to rights and boundaries of lands, all cases of oppression and illegal demand upon the ryots and in general, cases of misdemeanour together with all matters relating to the administration of revenue fell under the jurisdiction of the Diwani. See Progs. C.C.R. Murshidabad, 3 Dec. 1770, Vol. II, pp. 8-9; *ibid*, 11 Feb. 1771, Vol. III, pp. 160-61; Secret Cons. 17 Jan. 1771.

39. The term Darogha is generally written in India with the simple 'g' i.e. as Daroga. See Wilson's *Glossary*, p. 126.

40. Progs. Com. of Circuit, Kasimbazar, 15 Aug. 1772.

41. *The Encyclopaedia of Islam*, Vol. II, p. 606.

The Qazi was an indispensable personality in Muslim life. As an arbiter he settled disputes between persons who appealed to him. He had personally no power to carry out a sentence. He was competent to decide any of the questions affecting the life of the community that might have been dealt with by the Canon Law, i.e. marriage, dissolution of marriage, care of orphans, succession, contracts of various crimes and punishment of criminals.

See *Muslim Institutions* by Maurice Gaudefroy—De Mombynes, trans. by Macgregor, p. 148.

42. While reviewing the condition of the Qazis before the coming of Hastings, a Qazi-ul-Quzat of Bengal stated that the Nazim of Bengal appointed a Qazi-ul-Quzat who sent deputies on his part into each district. The latter were appointed and removed by the Chief Qazi. It was also narrated how in course of time persons from the lowest classes such as the common labourers and other ignorant persons were appointed to those offices. They did not know even how to read and write and had no other object than the receipt of Russom paid at burials and marriages. (Rev. Jud. Cons., 25 May 1792).

43. Progs. C.C.R., Murshidabad, 10 Jan., 21 Jan., 1771, Vol. II, pp. 37,80

44. Progs. Com. of Circuit, Kasimbazar, 15 Aug. 1772.

45. *Ibid.*

46. See *Muslim Institutions* by Gaudefroy—De Mombines, p. 153.

47. An Islamic state included Muhtasib or censor of public morals originally for religious scrutiny only. Later on, he used to perform the police duties of examining weights, measures and provisions and preventing gambling and drunkenness, in addition to his original religious function.

48. *Seir*, vol. III, p. 165.

"We see every day," added Ghulam Husain, "faithless Cazies who are ignorant even of the principles of Musulmanism, take leases of what they call the Cauzy's rights, and under-lease them openly to others, although these rights are no more than so many new inventions to torment the Mussulmen of this land and to extort money from them under a variety of pretences."

49. *Seir*, vol. III, p. 166.

50. *Ibid.*, p. 169; Progs. Com. of Circuit, Kasimbazar, 15 Aug. 1772; Dow, *op. cit.*, vol. III, p. civ; Bolts, *op. cit.*, p. 160; Verelst, *op. cit.*, p. 136, foot-note. "In Bengal," observes Verelst, "the people are so far from supposing justice due from the Magistrate that one quarter of the property in dispute belongs to the Judge as a reward for his trouble."

51. Sel. Com. Progs., 16 Aug. 1769.

52. *Seir*, vol. III, pp. 27-28.

53. Sel. Com. Progs., 16 Aug. 1769; Seventh Report, 1773, p. 324.

54. Sel. Com. Progs., 8 July, 1769.

55. Seventh Report, 1773, p. 324.

56. In remonstrance against the English Government's directions that all matters regarding inheritance and particular customs and laws of the Hindus should be decided by "the established Magistrates" assisted by the Brahmins and heads of castes according to the Hindu Law, this being in their opinion,

"the invariable practice of all the Mahomedan Governments of Indostan", it was sharply pointed out by Reza Khan that none of the Muslim Emperors had ever appointed a Brahmin to assist a magistrate.

"To order a magistrate of the faith," added he, "to decide in conjunction with a Brahmin would be repugnant to the rules of the faith and in a country under the dominion of a Mussulman Emperor, it is improper that any order should be issued inconsistent with the rules of his faith, that innovations should be introduced in the administration of justice." Moreover, if the Brahmins were admitted to the judicial service, the decision of disputes would, in his opinion, be delayed by continual contentions between the judges, owing to the difference of their laws and customs. Progs. C.C.R., Murshidabad, 20 April, 4 May, 1772.

57. "The rules", observes the Seventh Report (p. 324), "derived from these sources were in general very loose and uncertain; and the necessary consequences of so imperfect a system of law, rendered the exercise of criminal and civil judicature in Bengal, in a great measure discretionary."

58. Progs., C.C.R., Murshidabad, 4 May, 1772.

In the words of Grady, "In matters of property,.....and in all other temporal concerns (but more especially in the criminal jurisdiction) the Mussulman Law gave the rule of decision, excepting where both parties were Hindoos, in which case the point was referred to the judgment of the Pundits or Hindoo lawyers." *The Hedaya*, p. xiv.

59. *The Hedaya*, pp. 175-205; Harington, *An Analysis of the Laws and Regulations enacted by the Governor-General in Council at Fort William, Bengal*, vol. I, pp. 223-320.

60. The amount of Diyat varies with the gravity of the circumstances attending the crime. The indemnity for the murder of a man was fixed by the Sunna at a hundred camels or something equivalent. "The diya for a crime committed against a woman is half that given for a man, the diya of a Jew or Christian is one-third that of a Muslim." (Gaudefroy—Demombynes, *op. cit.*, p. 151).

61. The Mahomedan Law or its dispensation by the existing courts of judicature was, in the words of Harington, "repugnant to the principles or inadequate to the ends of justice." (*An Analysis*, Vol. I, p. 301).

62. Clive's observation, Long, *op. cit.*, vol. I, p. xxxi.

63. For Ghulam Husain's observations, see *Seir*, vol. III, p. 176.

64. Secret Cons., 7 Dec. 1775.

It was asserted by Hastings that the constitutional powers of the general Police of Bengal were exactly as he had described them. "Another business of the Fodjdar, "says the author of *Seir Mutagherin*, "was to give chase to banditti and highwaymen,.....he was to hunt them down wherever he could discover any of their footsteps and to put them to the sword as soon as he had seen them. In short, wherever he could perceive a malefactor,

he was to pursue him incessantly, until he had torn up by the roots the hairs of his existence and power." *Seir*, vol. III, p. 176. Also see *Ain-i-Akbari*, vol. II, p. 40.

65. *Seir*, vol. III, pp. 178-79.

66. Jarrett, *op. cit.*, vol II, pp. 41-42.

The *Ain* gives an elaborate description of his municipal duties also. It has been suggested by P. Saran that Kotwal combined nearly all the functions of the Muhtasibs of western Asia with those of the Sthanika of the Hindu period. (P. Saran, *op. cit.*, p. 397).

67. Progs. Com. of Circuit, Kasimbazar, 15 Aug. 1772.

68. Translation of a Sanad under the seal of the Nawab Serfraz Khan, Diwan of Bengal in the 17th year of the reign of the Emperor Mohammad Shah or 1735-36 A.D., Firminger, *op. cit.*, p. xlvi.

69. In a memorial in December 1771, Reza Khan remarked that "throughout Hindostan, in Bengal as well as in every other province, in case of theft, robbery or murder, the Zemindar in whose territory it is committed,.....is bound to surrender or produce the murderer with the effects—where the Zemindar possesses the sole power, he alone is responsible and where the authority is jointly vested in the Zemindar and the aumil, they are both answerable. If they could not produce them, they were made to account for them. If they on the other hand did produce them, they were held free and clear. If the robbers were not under their jurisdiction, he from whose jurisdiction they came was called upon."

(Progs. C.C.R. Murshidabad, 30 Dec. 1771, Vol. VIII, pp. 102-3).

For instance in November 1764, the English Governor requested the Nawab to compel the zamindar of Sitaram to restore the plundered effects of an English gentleman, Mr. Rose, who was murdered near Bakarganj by some boat people who took shelter in his zamindari.

(Long, *op. cit.*, pp. 388-89, No 775).

70. Secret Cons., 18 Oct., 7 Dec. 1775 ; 29 May 1776.

71. McNeile's "*Report on the Village Watch of the Lower Provinces of Bengal*" pp. 8-9.

This Report contains valuable information on the subject of village police of Bengal.

72. It was generally supposed that the village watch in Bengal was an immemorial institution—a remnant of the ancient village system. McNeile's researches showed that in the western divisions of Bengal—in Burdwan, Cuttack, Bhagalpur, Patna and a part of Murshidabad, the ancient village system was not entirely swept away, the general assignment of lands to the village watchmen in service tenure being one of its surviving features. But in the rest of Bengal in Chittagong, Dacca, Rajshahi and the remaining portion of Murshidabad, all traces of the village system had disappeared. As regards Nadia and Jessore, McNeile was not very sure. In all these

areas the village watch had been instituted by the British Government in the 19th century. (McNeile, *op. cit.*, pp. 3-5).

73. Hastings also admitted that the custom by which the zamindars were compelled to make restitution for stolen goods had become obsolete. (Secret Cons., 7 Dec. 1775)

CHAPTER III

CRIMINAL ADMINISTRATION : 1766-1772.

On 29 April 1766, was held at Motijhil the first Punyaha ceremony after the grant of Diwani. On that occasion, Najm-ud-daulah sat on the throne¹ in his capacity of Nazim of the Subah and Clive took his place on behalf of the Company as Diwan. Only a few days later, on 8 May, the young Nawab was suddenly afflicted with some acute pain in his bowels and he passed away on that very day.

Sudden as it was, the Nawab's death shocked and non-plussed the people. Immense crowds that thronged before the palace were, one and all, beating their breasts or bathed in tears. With the screams of the women were mingled the curses universally poured upon the supposed author of that "unaccountable death." People, no doubt, pointed to Reza Khan "whose sway and overbearing temper" the Nawab could never tolerate. But before long, the people became silent and sullen.² That fatal illness, reported the Select Committee, was incurred by some intemperance in eating and "increased by a gross habit and unsound constitution."³

Najm-ud-daulah died without issue; so his next brother Saif-ud-daulah, alias Mir Canaya, was immediately proclaimed his successor and received the royal Sanads. He was then a youngman of sixteen.⁴ The accession of a new prince only meant a reduction of his allowance. By the Agreement of 19 May 1766, this was reduced to Rs. 41,86,131-9-0 per annum, i.e. twelve lakhs less than that of his elder brother.⁵ This reduction, no doubt, pleased the Directors. It served in their opinion only to strike off the pay of an unnecessary number of sepoys of the Nawab and did in no way diminish his dignity.⁶ When on 10 March 1770, Saif-ud-daulah fell a victim to small-pox, minute guns were fired and other usual ceremonies were performed, the youngest son of Mir Jafar, a boy hardly twelve,

was raised to the masnad, a new treaty was concluded, the Company gave the usual assurance of support and the peshkash of Rupees three lakhs was sent to His Majesty the Mughal Emperor in return for Sanads and honours. But the pulse of general administration did not move a single beat faster.⁷ The only important event that marked Mubarak-ud-daulah's accession was the reduction of his allowance to Rs. 31,81,991-9-0 by the treaty of 21 March 1770.⁸

A question of succession to the Nizamat of Bengal would only a few years back have given rise to secret intrigues and negotiations. Memory was still fresh as to how the death of Mir Jafar had caused a flutter in the Council. But a reaction of that sort had now become unnecessary and unprofitable. On the death of Najm-ud-daulah, well might the Select Committee observe, "As he was a prince of mean capacity bred up in total ignorance of public affairs, this event, which formerly might have produced important consequences in the province can at present have no other effect than that of exhibiting in the eyes of the people a mere change of persons in the Nizamat."⁹ Saif-ud-daulah, admittedly, was a better sort. With the growth in years, he also gained in intelligence and wisdom. But all this made no real difference and his gentle manners and pliant disposition promised only to answer all the purposes of a puppet Nawab to the Company.¹⁰ In the long series of the titular Nawab Nazims of Bengal his role was to play on the pipe of his elder brother and in the same tune and no better.

The grant of Diwani by the Emperor Shah Alam II and the agreement with Nawab Najm-ud-daulah endowed the Company with a legal authority over the revenues and the civil and military administration of the provinces of Bengal, Bihar and Orissa. But neither the Directors nor their servants in Bengal considered it prudent to vest the management of civil administration in their European servants. They were happy to accept the revenues but not prepared to undertake the care of the country.¹¹

It was held by Clive as well as the Directors that the ancient form of Government should be preserved and the dignity of

the Nazim upheld. To do any act by an avowal of direct responsibility would be throwing off the mask. It would possibly rouse the suspicion of the foreign and the country powers and involve the Company in a state of political uncertainty and wars at the expense of their trade and investment. Another important consideration which determined their policy was the unfitness, inexperience and dishonesty of their servants.

Reza Khan was appointed Naib Diwan of Bengal and as such he exercised the Company's civil jurisdiction and was ultimately dependent on the orders of the Governor and Council at Calcutta.

He was also Naib Nazim of Bengal and managed the Nawab's household, regulated his expenses, issued all orders with respect to the general and police administration of the province, conducted all public negotiations, executed treaties and finally exercised the criminal jurisdiction of the Nawab Nazim himself. In short, every branch of the executive authority, except the military command which had been by treaty ceded to the Company, was vested in him.

A Resident was appointed as the Company's representative at Murshidabad to work under the control of the Select Committee at Fort William, to superintend the collections and to dispose of the revenues. It was also his responsibility to prevent oppression of the 'natives' and encroachments on the administration by the agents of Company's servants. Reza Khan acted in consultation with the Resident at the Durbar and along with him heard appeals from the district courts.

Similarly in Bihar, the collection of revenue was placed under the charge of the Chief of Patna. He acted jointly with Raja Dhiraj Narayan, the Naib Diwan and Naib Nazim of Bihar. The latter was placed at the head of both the civil and criminal administration of his province. On his dismissal in 1766, Raja Shitab Ray succeeded to his office.

At the outset, Reza Khan and Shitab Ray were not assigned any salary. They depended on their perquisites which amounted in Reza Khan's case to eight lakhs of rupees per annum. At Reza Khan's subsequent prayer for a fixed pay, an annual salary

of nine lakhs together with a jagir was granted to him. Shitab Ray was to receive Rs. 99,996 annually with an additional allowance of three lakhs. They had to relinquish all perquisites.¹²

The policy underlying the Double Government of Clive required the Company's servants to pursue a policy of non-intervention as far as possible in all matters relating to civil administration and justice. In general, the question of bringing redress to the people by means of judicial reforms did not engage their attention. The assumption of judicial responsibility surely meant loss of money, energy and time which could be better utilised in attending to their trade and investment. No comprehensive plan of reform was therefore formulated for some years, because the Company did not "stand forth as Duan" before the year 1771-72.

It was pleaded by Verelst before the Committee of Secrecy of 1773 that experience had shown the English Government that it was quite possible to maintain the forms of the ancient country judicatures and at the same time correct many abuses of the system of justice. The efficacy of this policy having been proved in the ceded districts, he added, the Select Committee at Fort William resolved upon their acquisition of Diwani to pursue the same in other districts too.¹³

The acquisition of the Diwani had, however, no direct consequence on the Company's position in the ceded districts where their servants, the Chief of Chittagong and Residents of Midnapur and Burdwan, were primarily entrusted with the management of the revenues. They directly administered every function of the Government except that of criminal justice, in which the authority of the Nazim was maintained. They were, however, 'invested with the superintendence' of the Faujdari courts. The police stations (thanas) were under their charge. The judge pronounced the sentence and this was submitted to the Naib Nazim for confirmation. When the orders of the latter were received, it remained for the Resident to see them executed. On certain occasions, when the orders from Murshidabad enjoined the infliction of horrible penalties like

mutilation or impalement, the Chief of Chittagong procrastinated the enforcement of these orders and awaited directions from his superiors at Fort William.¹⁴

The only change that took place in the years that immediately followed the Diwani had its origin in the representation of Sykes, Resident at the Durbar (1766-68), just after his appointment. In addition to the general supervision of the revenues, the Resident had to inspect the courts of justice at Murshidabad. Along with Reza Khan he received and determined cases of appeal from the mofussil courts. Without proposing any alteration in the established courts, Sykes recommended to the ministers at Murshidabad the establishment of a court at Murshidabad and in each of the districts for the decision of all causes not exceeding the value of 500 rupees and this was accordingly carried into execution by the Murshidabad Government.

The new court at the capital consisted of twelve persons of the best character and with adequate salaries and an appellate jurisdiction, while the mofussil courts were constituted of six judges each and in the same manner. The judges sat by rotation, three at a time.¹⁵

Becher, who succeeded Sykes in 1769, found such a court in existence in Murshidabad. He stated before the Committee of Secrecy that he had allotted one day in every week to inspect the proceedings of the 'Supreme Courts' at Murshidabad and always exercised his extensive authority to promote justice.¹⁶ Curiously enough, no mention was made of any such court in the despatches from Bengal. In reply to the enquiry of the Directors whether there lay any appeal from the two courts at Dacca, the Select Committee replied in 1769, that these two courts were held on the same footing as others in the different parts of the country and that appeals were frequently made from them to the Nawab and the Resident at the Durbar. They did not mention any new court of the type described by Sykes.¹⁷

In general, the English continued for some years after the Diwani to work on a policy of non-interference. These conditions continued till 16 March 1768, when the Directors instructed the Select Committee "to endeavour to abolish" the

practice of confiscating the property of those who died without children and "to introduce the right of bequeathing by will."¹⁸ Although the Directors had decided to pursue a policy of indifference they could not help noticing that the numerous Faujdars, amils, shikdars and others practised all the various modes of oppression. They apprehended great danger in combining the powers of the revenue and justice in one person as was the case with the Faujdari and most other public officials.

On 30 June 1769, they signed an important letter and sent it to Bengal in a special ship, the *Lapwing*. In this letter, they recommended the institution of two Controlling Councils at Murshidabad and Patna. They were about to send out three Commissioners with superintending and controlling powers over their government in Bengal and Bihar. What was intended was not any violent and sudden change of the constitution, but the removal of the evils by degrees—to dismiss the idle dependants appointed to nominal but useless offices by the country Government and to find out the real state of the produce, rents and cultivation. The revenues of ceded lands and Calcutta had been considerably augmented and they attributed these advantages to the Company's direct management of those lands. The real purpose of these measures was to improve the Diwani collections.

The three Commissioners who were entrusted with the execution of this plan were instructed on 30 September 1769, to make a strict and speedy enquiry among other things into the proceedings of the courts of justice and to correct the abuses that had crept therein.¹⁹

Meanwhile, left to the care of the Nawab's officers who lacked means to enforce their decisions, the machinery of law and justice in the Diwani lands of Bengal had lost all efficacy and ceased to operate beyond a narrow circle around Murshidabad.

The numerous offences which used to be compromised by fines left a great latitude for unjust decisions. Petty offenders and even persons falsely accused were frequently taxed with heavy demands while capital crimes were often absolved by

the venal judges. Instances were frequent when the "venal, ignorant and rapacious judges" availed themselves of "a crude and mercenary system of laws." Sometimes also this lucrative function was exercised by the self-appointed Qazis and Brahmins. The want of regular registers of all cases also encouraged the propensity of the judges to bribery and fraud. Judicial powers were assumed by any man who had the means to impose his decisions on others. These conditions produced a state of insecurity not only in the administration of justice, but also of revenue.²⁰

The Select Committee at Fort William were convinced that almost every decision of the existing courts was "a corrupt bargain with the highest bidder", though they could not yet determine whether "the original customs" or "the degenerate manners" of the Muslims had most contributed to confound the principles of right and wrong in these provinces. They, therefore, took some steps to reform the malpractices that had perverted justice in Bengal and their action was fully approved by the Directors. Supervisors were appointed with powers to control the collections and supervise justice in the Diwani provinces under direct control of the Resident at the Durbar. It was Sykes who had first stressed the utility of appointing English gentlemen as checks on the collections. The next Resident Becher was more emphatic in his criticism of the prevailing malpractices and recommended in May 1769, the appointment of English Supervisors. In July, the problem was considered by the Select Committee who unanimously resolved on 16 August to appoint a Supervisor in each district. They had learnt by the experience of the ceded districts where the supervision of Europeans had been attended with satisfactory consequences and the new scheme was designed in the light of that experience.²¹

The Supervisor was required to (a) submit a summary history of the district, (b) draw an exhaustive report of the state, produce and capacity of the lands, (c) ascertain the amount of the revenues, cesses and all demands made on the ryots, (d) regulate commerce and expose the tricks of the Gomastahs.

and finally, (e) enforce justice and extirpate corruption.

In the sphere of justice, the Supervisors were instructed to reform all corruption, check every composition by fine or mulct, abolish the arbitrary imposition of fines and enforce justice where the law demanded it. In capital crimes, sentences before execution were to be referred to the Resident at the Durbar and by him to the ministers. In civil causes, the method of arbitration was to be recommended. Registers of all causes were required to be lodged in the principal kachahri with a copy transmitted to Murshidabad. The Qazis and Brahmins who administered justice among their respective communities in every village, town and quarter were to be summoned to register their Sanads. The peculiar punishment of forfeiture of caste was often inflicted from personal pique among the Hindus. The Supervisors were directed to see that this punishment was conditioned by a regular process and clear proofs, but if a man had legally forfeited his caste, he should not be restored to it without the sanction of Government.

On 14 September the Council at Fort William adopted this plan of supervision and the Supervisors were appointed for different districts of Bengal, viz., Birbhum, Dacca, Dinajpur, Hugli, Jessor, Nadia, Purnea, Rajmahal, Rajshahi, Rangpur and Tippera. But on the representation of the amils and zamindars, the execution of the plan was put off till February 1770, except in the districts of Purnea, Rajmahal, Rajshahi and Nadia, where their authority was restricted to a negative voice and a mere controlling power on the Nawab's officers in revenue and justice, while the final determination was left to the Nawab's ministers. It was made clear to the Supervisors that the Council had no intention of altering the present form of government and that with due respect to the Nawab's officers, they were only to recommend necessary regulations. On 28 June 1770, even that controlling authority was taken away from the hands of the Supervisors except those of Birbhum, Dacca, Dinajpur and Purnea and their authority was confined to the superintendence of justice.

But the Council at Fort William seriously resented this

process of reaction and in September 1770, they restored the controlling authority to the Supervisors. Meanwhile, Supervisors were appointed in the five districts of Bihar—in Chapra, Arrah, Darbhanga, Sasaram and Monghyr.²²

Though the Commissioners entrusted with the correction of abuses in the administration of justice did not reach India, the task of giving effect to the Court's instructions was now undertaken by the authorities at Fort William. In July 1770, the Council at Fort William made appointments for the two Controlling Councils of Revenue at Murshidabad and Patna with effect from the first day of September of the same year.

The office of Resident at the Durbar was abolished and its functions were taken over by the Controlling Councils which were to have control over the Diwani revenues and to carry on all transactions with the country Government. They were always to take the advice and opinion of Reza Khan and Shitab Ray, the Naib Diwans of Murshidabad and Patna respectively, and give them orders which were to be precisely and immediately obeyed by the said ministers. Although all the business went with the seal and signature of the Naib Diwans, the power of determination was left with these Councils and no appointment was to be made, nor was the Naib Diwan's seal to be put to any order without their approbation.²³

Reza Khan about this time asked for a specification of his future role in the administration of justice in general and specially in criminal cases. The Controlling Council of Murshidabad, therefore, sought the Calcutta Council's directions as to how far they were to interfere and what was to be left to the country Government. On 11 October 1770 the Council replied that the administration of justice should be continued as usual, but that all transactions should ultimately come before the Controlling Council which was to exercise powers of interposition. These instructions do not appear to have been very clear to the Controlling Council.²⁴

They therefore formulated certain regulations to the effect that all criminal cases should be tried in the criminal courts, but prior to the execution of sentences the proceedings should

be submitted for approbation to the Controlling Council. Causes relative to the property in land and the revenue should be referred to the Khalsa kachahri and causes for debt to the judicial Adalat. The Controlling Council were to form two corresponding courts to revise the proceedings of the country courts and finally determine thereon. Reza Khan was informed of these regulations and requested to acquaint the Controlling Council as to whether it was necessary to issue parwanas for the apprehension of dacoits and murderers as also to deliver to them copies of all parwanas to be issued in future, along with an account of those in force.²⁵

At Patna also, the members of the Controlling Council began to preside over and confirm all sentences of the country courts. But this measure seemed repugnant to the Council at Fort William who resented this stepping forth as "Principals in the Government of that province." The policy adopted by the Council was to interfere as little as possible with the business appertaining to the Nizamat and established by long usage and at the same time to pay a strict attention to prevent injustice as much as possible by proper representations to the Government.²⁶

Meanwhile, the Supervisors had assumed the right of superintending and revising the proceedings of the courts of justice in eleven districts.

Many of the abuses were too glaring to escape their attention. In Rajshahi, the clamour was loudest against the venality and oppression of the Qazis who, as Rous reported to the Resident at Durbar, since the establishment of the Company's power had invented a variety of fines and taxes upon the helpless ryots and established a mode of compromise for capital offences. This iniquitous mode of punishment could not but surprise a zealous young man like Rous who had arrived in India only in 1765. It led him to enquire into the nature of these fines. He found that the rapacity and maladministration of the officers of justice had nearly doubled within the last few years. Corporal punishment was never inflicted for any crime whatsoever. The Qazi punished all offences by exorbitant fines, the value of which was determined by the Qazi

himself, although this method of composition for criminal offences was not permitted by the Quran in any case except homicide.

Rous was convinced that the loud complaints against the oppression of the Qazis were well-grounded, for their office was bought, sold, and transferred and it became a source of private emoluments for all from the head Qazi of Murshidabad to the naib of a village. In the name of a law which he never learned to understand the Qazi passed judgments on the lives and properties of individuals. Rous considered an immediate reform requisite, and in January 1770, published an order, requiring every Qazi of Bhaturia to register his Sanad and to transmit to Rous an exact account of the fines and cesses usually levied by him in the different villages within his jurisdiction and the rate of fees taken for the performance of the several religious duties of his office. Thus without introducing any innovation Rous first tried to abolish totally the power lately usurped by the Qazis of determining the criminal offences by the imposition of arbitrary fines, to tie down their practice strictly to the original rules of their appointment as set forth in Mahomedan laws and the established customs of their own Government.

Sometime later he issued certain regulations for the conduct of the pargana Qazis within his jurisdiction. Some of these were as follows : they were to hold no court except in the public kachahri. An exact register of all their proceedings was to be transmitted to the Supervisor. They should never demand any composition for crimes and the rate of their fees should be stuck up on the wall of the kachahri, attested by the zamindar. A peon apprehending a prisoner must not take above two annas per day besides victuals. If any English Gomastah sent peons and detained prisoners or if any talukdar or Daroga of the ganjes exercised jurisdiction beyond his precinct, the Qazi should endeavour to check such unwarrantable practices, and in case of failure he was to give immediate information to the Supervisor.²⁷

On 22 August 1770, a murder case was tried by the judges

of the Faujdari court of Bhaturia, attended by both Muslim and Hindu officers who examined witnesses in the presence of Rous himself. A pregnant woman, Noory by name, had been killed by Munsooram, Agni and Hooban. It was clearly proved that Hooban was employed by Munsooram and Agni and that the medicine administered by Hooban to cause abortion and the means she used to extract the foetus were the immediate causes of Noory's death. But the court hesitated to pronounce the capital sentence ; for, according to the Mahomedan Law such a sentence required the attestation of a certain number of eye-witnesses of Muslim faith. Rous wrote to the Resident at Durbar to determine in consultation with Reza Khan whether it was permissible to set aside these obstacles to the execution of a penalty which was forbidden only by a religious bias, incompatible with equity and the natural laws of society. But it was not within his powers to do more than making this recommendation.²⁸

On 10 March 1771, Rous again strongly recommended the infliction of capital punishment in a case of wilful murder tried in the Bhaturia Adalat in which a man had cleaved off with a hatchet the head of his six-month old daughter. The culprit Alauddin repeatedly confessed that he had done so in a fit of despair and brought it to Nator to strengthen his complaint against the Qazi who by delaying his marriage had caused him to perpetrate this barbarous act. The Quran laid down death for such a crime, but some later commentators regarded the destruction of a grown-up person as a punishment more than adequate to the death of a child. The Qazi therefore declined to inflict the death sentence.

The peculiar circumstances of this barbarity induced Rous to recommend a severe punishment and as a consequence the Naib Nazim went "in some degree beyond the letter of the Mahomedan law, tho' not so far as immediately to affect the life of the culprit."²⁹

In Purnea as well, Supervisor Ducarel found that arbitrary fines under the name of Abwab Faujdari were farmed as a part of the Jama (rent roll) of each pargana to the intolerable vexation

of all orders of the people. Within the extent of his farm, the farmer judged the delinquents and appropriated the fines, which were levied not in proportion to the degree of criminality but according to the "circumstances of the accused." Thefts and murders were compromised for four or five rupees, while fornication and witchcraft were punished with four or five thousands. There was a particular set of people whose profession was the discovery of witchcraft and their victims were generally the rich people. There were many women who lived by discovery of fornication and adultery. The slightest evidence was sufficient to impose a fine. Ducarel issued positive orders prohibiting such fines, but as a practice long established is always difficult to eradicate, he frequently heard of some infractions of his orders, which he never failed to punish in an exemplary manner.

What might have been the former customs there, when the native Government subsisted in full vigour, Ducarel did not know; but as far as he could gather from enquiries from the people of experience, there was no court of public justice in Purnea for many years past. The Adalat had been established there only after the Diwani, but its administration was much lax, since the local officer of justice had little regard for the welfare of the country on account of the uncertainty of his continuing in the post for more than one year.

Ducarel tried to render justice as free, open and convenient as possible. Two regular courts were held every week in the presence of the Faujdar and all the public decisions were given according to their established laws and local customs. Ducarel only attended to these proceedings and these were transmitted monthly to the Sadr Adalat.²⁰

In some cases Ducarel successfully intervened in the sentences passed by the Naib Nazim himself. On 18 February 1771, Ducarel transmitted certain proceedings of theft and robbery to the Murshidabad Council for proper measures. As for robbery, the Sardar and six others of a notorious gang of professional robbers had been put into custody. Ducarel recommended the severest sentences to be executed on the very spot

where the crime had been committed with a view to striking terror among other criminals.

Two cases of theft were included in his report. In one of them, one Kylih was convicted of stealing a sum of 400 rupees of the Government. In the second case, the accused Dinaullah had robbed Mir Haferullah of seven rupees, a horse, a sword and few other goods after making the latter senseless by the use of 'Bhang' and other intoxicating liquors. Both these thieves were condemned by the Faujdari Adalat of Purnea to have one hand and one foot cut off. The Supervisor proposed that in lieu of that punishment in these and similar cases, the criminals should be sent down to the public works to work for such a time as the degree of their crimes demanded.

In their reply of 25 February, the Murshidabad Council expressed inability to secure any departure from the sentences already passed by the Nizamat Adalat, for the ultimate decision in all criminal cases rested entirely with the Naib Nazim. They, however, expressed the hope that if the Council at Fort William admitted their right of interference in criminal cases then only they would take into consideration the propriety of deviating from the letter of the Muslim Law and inflicting in particular cases punishments more consistent with the English notions of justice. As usual the Murshidabad Council returned the proceedings of the Adalat with the sentences of the Naib Nazim affixed. But Ducarel was not to be daunted. He pointed out the distinction between the ordinary thieves and these seven men belonging to a large gang of robbers who had long lived in open defiance of the laws and were the terror of all people in the neighbourhood. Without exemplary punishments he declared his inability to cope with the frequent robberies which were committed in every part of the district. He also remarked that in cases like the present ones, the Government had frequently interposed before and deviated from the usual decisions of the Muslim Laws. In the hope that the Naib Nazim would reconsider these circumstances, Ducarel then retransmitted these proceedings along with a representation of those neighbours who were concerned in the apprehension of those notorious

seven. In view of fresh lights the Naib Nazim altered the sentences already passed by himself about a month ago.³¹

A long-drawn out case arose with the murder of a clerk (muharrir) by Mir Kasim, naib of Mirza Muhammad Ali, deputy collector (Naib Sazawal) of Nadia. For the simple fault of not depositing by the evening a sum of seven rupees which was his day's collection, Krishnachandra muharrir was on 25 August 1770, tied up by the hands and was so severely flogged that he became senseless and died a week after, leaving behind a young wife and a blind father who approached Jacob Rider, Supervisor of Nadia, for redress.

Thereupon, Rider held an enquiry in conjunction with Raja Krishnachandra and his son. He summoned Mir Kasim and his master, Mirza Muhammad Ali to appear before him with a number of witnesses who were then examined by the officers of the Adalat and the naib of the Qazi at Rider's residence. Mir Kasim confessed his guilt, while Mirza Muhammad Ali pleaded innocence, although Krishnachandra had been flogged within forty yards from his house. The former was remanded to custody and the latter was freed, for the Raja of Nadia himself signed a security bond and took him into his own charge.

A report of these proceedings was transmitted to the Murshidabad Council and forwarded therefrom to Reza Khan. Meanwhile, Raja Krishnachandra too had sent another representation to the Naib Nazim slandering the Supervisor and attributing the muharrir's death to natural illness. The matter was, therefore, referred back to Rider for further investigation. He supplied additional proofs. Still, the Controlling Council directed him to send Mir Kasim to Murshidabad for further enquiry by the court appointed for the trial of capital crimes. This order was immediately obeyed and the culprit was sent on 8 October 1770. No trace is available of any further enquiry. But just within a month, Mirza Muhammad Ali was dismissed. Raja Krishnachandra and his son were temporarily removed from power. There is no direct evidence to connect these measures with the murder of the muharrir, yet it can be argued

that this fresh stigma did go some length in influencing the Chief and Council against the above persons.³²

A tragic occasion moved Rider to make a serious representation on 28 February 1771 against the Bazi Jama, which was an inferior office of criminal justice, but in practice highly oppressive to the inhabitants. The case was this : a Jamadar-mirdaha (head peon of police) of Santipur while performing his office of Bazi Jama laid a false accusation against a woman for fornication. Against the rules of her caste, he took her by force from her house to stand trial in the court of Bazi Jama. In the absence of sufficient proof she was honourably acquitted. But unable to stand the loss of her reputation, she committed suicide by drowning. The officers of Adalat made enquiry into the case and it was referred to the Naib Nazim who punished the Jamadar-mirdaha who was instrumental in the death of the woman.

Rider cited this case in support of his recommendation for the total abolition of this oppressive tax. He argued that the sums annually collected from this court of Bazi Jama did not exceed Rs. 1,000. The existence of this court appeared, therefore, very inadequate when compared with the terror it created among the inhabitants who being frequently prosecuted had no way but to fly from their homes in order to avoid the troubles. Rider mentioned that he had by his authority put a stop to the exercise of that office pending the receipt of the Murshidabad Council's orders. In reply the Controlling Council admitted that the Bazi Jama was everywhere a source of great grievance and oppression to the ryots and heartily approved of its total abolition. Rider was desired to announce this measure throughout the district.³³

The Supervisor of Dinajpur made an endeavour to remedy the great inconvenience that arose from the want of inferior courts in the different parts of the district. He divided the district into regions and appointed inferior officers of justice in each with authority to enquire and determine in cases of theft, quarrel, and debt, subject to appeal to the Sadr Adalat of Dinajpur. In criminal causes, their sentences were not

to exceed Rs. 3 in fine and 10 rattans in corporal punishment.³⁴

The inadequacy of their powers and the insufficiency of the police forces rendered the Supervisors as well as the Controlling Councils of Revenue helpless spectators "to the most shocking scenes of human misery" and oppression.

At Bhagalpur, Rajmahal and Rangpur, villages were being daily pillaged and the travellers were frequently robbed and murdered.³⁵ In the Issoufpur and Mahmudshahi parganas of Jessore, the robbers travelled in large gangs of three to four hundreds in number. The unfortunate inhabitants of many villages deserted their homesteads and fled to other parts of the country for immediate security. There was one man not far from Murli, who had a sufficient force with him to encounter even a whole company of sepoys. Whenever they passed through the villages the bandits used to kill the people, plunder their houses and set fire to them. Then they marched to the next town to treat it in the same manner. They never forgot to make considerable collections in the parganas they passed through.³⁶ Far from maintaining public peace the zamindars and thanadars of Purnea could hardly shield themselves against the assaults of dacoits. "Hardly a day passes", wrote Ducarel, "that I do not hear of some barefaced robbery on the houses of the most answerable tenants."³⁷

Since January 1767, expeditions were sent into the Jungle-mahals in order to establish the British authority there, so that the Company's revenue might be regularly realised. The Chuars, however, gave stout resistance. Their depredations became an annual feature of the western districts of Bengal. In the coastal district of Chittagong, the Maghs appeared in great numbers and carried away the inhabitants "daily from different parts."³⁸

In many places, Faujdars, amils and the Company's troops exploited the helplessness of the people and set no limit to their cruelties and exactions. The ravages committed by the troops in their march through the villages of Rajmahal and Bhagalpur which a few years back were inhabited by numberless people,

were but too apparent. Most of the towns there were deserted and the security of the rest was derived from their extreme poverty. The Supervisor, Harwood, observed that it was difficult to determine whether the pillages of robbers, or the oppression of the Faujdars or the frequent movements of troops or the stationing of a brigade at Monghyr contributed most to the desolation of his district.³⁹ Wilmot of Jessore admitted his inability to prevent the Company's troops from plundering the ryots. "Was it only practised by a few", he complained, "it might be effected, but this is indiscriminately the crime of the whole, so that instead of eradicating the nuisances for which they were sent they considerably multiply them."⁴⁰ In November 1770 Chiton Manik, a servant of Captain Mackenzie, accompanied by 50 sepoys and harkaras perpetrated various disturbances under the pretence of searching robbers and embezzled Rs. 1,000 of the Company's revenue of the Rangpur district.⁴¹

The famine of 1769-70 sapped the economic life of Bengal, ruined the peasantry and forced many of them into a life of crime. Even when its ravages subsided, they had not the means to resume cultivation and return to their former ways of life. Joined by them, the banditti became more formidable than ever. This explains why from the end of August 1770, murders and robberies increased both in number and severity in the famine stricken districts of Bengal.

The disordered state of the country attracted various bands of Sannyasis and Fakirs. Under pretence of pilgrimage they annually passed through the country, plundered the villages and exacted contributions from the people. They moved rapidly like a desolating blast in groups of hundreds and even thousands. Besides the nomadic Sannyasis, there were Resident Sannyasis who combined the trade of money lending with that of dacoity.⁴²

The Nawabs had not sufficient forces for the maintenance of law and order. The control of the country's military organisation was in the hands of the Company. Najm-ud-daulah had not only assigned to the Company 5 lakhs of rupees per month and the chaklas of Burdwan, Midnapur and Chittagong

for meeting the expenses of the troops, but also disbanded all his troops maintaining only those which were immediately necessary for his 'sawari' and for his dignity. In December 1770, under the directions of the English Government, Reza Khan issued the parwanas of recall of the Faujdars and amils from the different districts. Only in Dacca and Hugli, where it was deemed necessary to keep up the show of the Nawab's authority to hoodwink the foreign nations, the Naib Nazim and the Faujdar were respectively allowed to continue in office.⁴³ These discharged Faujdars, amils and soldiers along with other unemployed people swelled the ranks of the lawless section of the society.

The preservation of peace became all the more difficult on account of the marauding activities of the zamindars. The old system of maintaining law and order through zamindars had broken down. Far from policing the country the zamindars were often found in alliance with notorious gangs of dacoits whom they sheltered and helped in their outrages. Though 'muchalkas' were taken from the zamindars of Rangpur in order to prevent them from harbouring dacoits, they found it "their interest to encourage these people."⁴⁴ Whenever Durrup Deo, zamindar of Baikunthapur in Cooch Behar came down from his mountain fastness into the districts of Rangpur, Dinajpur and Purnea, he carried fire and sword and left a desolate country behind.⁴⁵ Owing to the machinations of the local zamindars, the Supervisor of Jessore despaired of extirpating the banditti of his district. These zamindars leagued against him. While giving advice to arrest the robber chiefs, they furnished the latter with exact and timely information of all the movements of the Supervisor. Thereby not only the attempts of capture were foiled but the sepoys became easy victims of dacoits.⁴⁶ Some of the "itinerant robbers" who ravaged Tirhut were known "to be acting under the authority of Raja Partab Singh", a zamindar of Darbhanga.⁴⁷

Sometimes, the zamindars openly defied all authority. On 16 March 1771, several hundreds of peons and barkandazes accompanied by the sepoys of Lakshmi Narayan Ray, zamindar of

Rokanpur, and assisted by farmers of Lakshmiganj and Mangalbari plundered and burnt the Company's market at Nawabganj. Some of the merchants in endeavouring to extinguish the fire and rescue their property were killed on the spot and many others were wounded. A flourishing market was thus entirely destroyed and the ruined merchants all fled to Rajmahal and dared not return to Nawabganj without a force sufficient to repel further assaults by Lakshmi Narayan's men. The Supervisor felt helpless for lack of adequate means of protection.⁴⁸ For several years certain villages of Jessore were plundered and depopulated by robbers named Gureebullah and Chandkari. Whenever men were deputed to arrest them, the telingas and paiks of the zamindar of Mahmudshahi pargana imprisoned those men, extorted from them large sums and rescued Gureebullah and his accomplices. In one of their marauding expeditions, the agents of the Mahmudshahi zamindar attacked a village, plundered the property, cut down the harvest and carried away the Gomastah of the village, mortally wounding another person. In the affray that followed an old woman and three or four pregnant women were also put to death. The whole village put on a dismal appearance.⁴⁹

On many a precarious occasion the Supervisors stressed the urgency of sending additional companies of sepoys to their respective stations. The common instruction they received in return was for encountering all lawless elements with whatever limited number of sepoys they had at their disposal.

On receipt of the information that the Sannyasis who annually ravaged the northern parts of Dacca and the borders of Rajshahi had again assembled numbering about 1500 and raised huge contributions, the Supervisor of Dacca prayed for only two additional companies of sepoys. There were only two companies at Dacca, which were not sufficient except for only guarding the factory. But the Murshidabad Council expressed their inability to comply with his request.⁵⁰ The few sepoys that were allowed for the Rangpur district were constantly employed against the banditti. A reinforcement of at least two or three companies was absolutely necessary there, owing to numerous

incursions of Fakirs or other bands of plunderers into the several districts of Rangpur, Edrakpur, Baharband, Dinajpur and Rajshahi. For want of sepoys the Supervisor was forced on one occasion to send paiks under a sardar to encounter two of the most notorious dacoits like Rahmat and Daulat. As was only natural, the dacoits surrounded those paiks, cut the sardar and two of the paiks to pieces and committed other acts of cruelty and fled into the outlying parganas of Rajshahi zamindari where they always found an easy asylum when pursued. Encouraged by the indifference and powerlessness of the Government, the dacoits of Rangpur plied their profession with vigour. About the middle of February 1771, a large body of dacoits carried off the Company's collections amounting to Rs. 15,000 after killing four men who were carrying the sum. At the Supervisor's request to relieve the poor people from the depredations of Durrup Deo, the Murshidabad Council sought the opinion of Reza Khan who called for information as to whether the revenues of the ravaged parganas would warrant expenses to be incurred by the Company. He would advise the Council to undertake the task of protecting the ryots, "should it appear that the Company will thereby be benefitted."⁵¹ Grose's repeated applications for a reinforcement of sepoys met with flat refusal. He was advised by the Murshidabad Council to make the best use of the troops already existing in his district.⁵² Similarly, when the Supervisor of Jessore was in urgent need of additional force he was given a bit of empty advice, "As it is entirely out of our power to afford you any reinforcement of Sepoys, we must rely on your disposing the force you at present have to the utmost advantage so as effectually to check the ravages of the dacoits and in the end to rid the country of these depredations."⁵³

Thus the Supervisors as also the Controlling Councils could not help the oppressed much because it was not within their power to do so. "Am I quietly to stand by", asked Grose in righteous indignation, "and see . . . the vilest acts of oppression without being able to render the aggrieved redress"?⁵⁴ But their hands were tied and their steps clogged by the basic pattern

of the Dual System. Their principal business was to supervise and control the revenue functions of the Company and not to do anything which amounted to an open disavowal of the Nawab's authority. So the country drifted towards ruin.

The apathy of the Directors, however, was gradually wearing off. In their General Letter, dated 10 April 1771, they recommended certain measures and these happened to be substantially those which the Select Committee commissioned the Supervisors to carry out as a result of their deliberations of 16 August 1769.

In their anxiety to secure justice for every individual the Directors enjoined the Council to exercise their "influence with the Government, to supply all defects" in the administration of justice. No alteration in the administrative arrangements was, however, suggested. They laid special stress on the necessity of (a) preventing their own Gomastahs and other agents from indulging in "abuses, exactions and extortions" under the cloak of the Company's name, (b) abolishing the imposition of arbitrary fines and taxes on the litigating parties, (c) registering the Sanads appointing "judges" for the Mahomedans or Brahmins for the Hindus ; (d) preserving the records of all sentences of the Nawab's courts in the kachahri with copies sent to Murshidabad, (e) encouraging the 'natives' to adjust their disputes by arbitration instead of lawsuits and (f) persuading the Nawab's Government to consent to the abolition of the Chauth, exacted by the courts in cases of arbitration.⁸⁵

Consequently on 20 December 1771, the President and Council at Fort William sent instructions to the several Councils and factories for carrying these orders into execution.

These orders produced varied reactions among some of the Supervisors.

Baber, Supervisor of Midnapur, wrote on 13 January 1772, that these reforms had already been effected in that district. The entire judicature there operated under the authority of the Resident and persons appointed by him in every pargana. All cases were reported to the Resident and duly registered in the Faujdari kachahri so that there could be no arbitrary

fines or impositions or the exercise of any undue authority independent of the Resident.

Stewart, Resident of Burdwan, observed that the mode of arbitration was found "dilatory, indecisive and unsatisfactory" and that the people preferred the regular kachahri to it. He ascribed the evils in the administration of justice more to the corruption prevailing among the Muslim and Hindu judges than to any defect in the laws or in the regulation of the courts and remarked that the grievances could be redressed only by a strict superintendence of the Company's servants.

Bentley, Chief of Lakshmipur, opposed the absolute abolition of the judicial fees on the plea that it would afford too much encouragement to litigation. Fines adapted to the degree of offence and under proper restriction seemed to him to be the best mode of punishment. He suggested the establishment of subordinate courts of judicature at places distant from the main city of the district. As very few persons chose to undertake the office of arbitrator, he stressed the necessity of making them accept it on pain of fine.

It appears from the reply of Vansittart, Chief of Patna, that the Chauth as such had already been abolished though an amount of two annas in lieu thereof was levied there to defray the judicial charges as also to check litigiousness. The President and Council thereupon directed him to abolish it entirely. It also appears from a letter of the Chief and Council at Patna that it was the custom there to compel persons chosen as arbitrators to undertake that office unless they could show sufficient excuse.

Arbitration, however, did not apparently satisfy the general body of inhabitants and it was never universally adopted; otherwise all causes which could be decided by this mode were referred to the arbitrators, if the parties consented. Reza Khan issued parwanas to the Naib of Dacca, Faujdar of Hugli and officers of the Adalats in the districts to the effect that in all matters of debt, trade, petty quarrel and ordinary occurrence, where the parties were willing to refer to arbitration they should appoint arbitrators and that registers should be duly kept in

the 'Courts of Adalat' of all causes decided in that way. As to the proposal for the general use of arbitration in all civil causes, Reza Khan put forward his objections in a memorial. He stated that all disputes of inheritance, property, purchase, assignment and the like must be decided according to the laws of the Mahomedan scriptures and could not, therefore, be referred to arbitration. Similarly, causes of misdemeanour and criminal cases such as murder, theft, adultery and highway robbery as well as cases of fraud and violence must be judged by the proper officers of justice with the assistance of the expounders of law. On the other hand, arbitration was the best mode of decision for cases of debt, accounts and commercial concerns.

The Murshidabad Council too gave their opinion that it had been the uniform maxim of the Muslims to suffer no deviation from the decrees of their laws and so cautious had they been in this respect that they had always excluded the Hindus from all share in the public administration of justice. So the above Council apprehended that any attempt on the part of the Company to introduce suddenly the general practice of arbitration would only excite discontent and apprehension of the officers of justice and inhabitants themselves, for they would regard it as an infringement of their laws, religion and customs.⁵⁶

To this objection, the President and Council replied that it was not their intention to make any alteration in the established courts or forms of justice nor to subvert any of the established laws, but it was only to facilitate the course of justice that they had recommended the mode of arbitration in civil cases regarding debts and disputed accounts.⁵⁷

Objections to arbitration raised by some officers concerned with justice who put forth in their support the reluctance of the parties to refer to arbitration, the unwillingness of the persons chosen as arbitrators to undertake that office, the delay attending its execution as also the over-cautiousness of Reza Khan to strictly abide by the scriptures and not to suffer the causes for which provision existed in the Quran to be tried by persons other than the proper officers of the Adalat. In view of these difficulties it became obvious that the general establishment of

the mode of arbitration must be the gradual work of time and could not be brought into practice by any force of authority.⁵⁸

Thus the system of Double Government, by which the internal administration of the country was left in the hands of the 'natives' under the control of a few European Supervisors failed to check the vices of the old regime and the evils of a divided authority.

In the memorable despatch of 28 August 1771, the Court of Directors expressed their determination to stand forth as Diwan and take upon themselves the entire management of the revenues. They recorded censure on Reza Khan's conduct and ordered the Council to remove him from the office of Naib Diwan. A similar disciplinary measure was taken against Raja Shitab Ray, Naib Diwan of Bihar. The office of the Naib Diwan was abolished altogether. The Company's new decision signified a great advance from Clive's system of Dual Government and placed the collections and civil justice upon a new foundation by transferring them from the management of the Nawab's officers to the agency of the Company's European servants.

As for the Nazim, they still held him responsible for the criminal justice, law and order. At the same time, they ordered that an "ostensible minister" should be appointed "in the Company's interest at the Nawab's Court to transact the political affairs of the Sircar" and mediate between the Company and other European nations. They were opposed to the reappointment of Reza Khan. So they stressed the need of finding out some other qualified person of whose attachment to the Company they were well-assured. The Council were directed to recommend such a person to the Nawab to succeed Reza Khan as a minister of the Government and his guardian during his minority. An annual allowance of 3 lakhs of rupees was assigned to him—a sum considered to be a munificent reward for the service he was expected to render to the Company and sufficient for supporting his rank and dignity.⁵⁹

It was to Warren Hastings, who assumed office of Governor on 13 April 1772, that the task of giving effect to the Company's

new policy devolved. In a separate address, the Secret Committee of the Court of Directors gave him orders to immediately arrest Reza Khan with his whole family and adherents and to bring him down to Calcutta to stand his trial on certain charges of embezzlement and malversation.⁶⁰

Coming as a surprise as it did, this measure is not very difficult to explain. Both the Directors and their servants in Bengal took Reza Khan as a mere tool for their ends, whose authority they sought to support on grounds of expediency. Their revenue functions and civil administration as worked out by the pattern of the Dual System and the security of their trade and investment required that he should act apparently as the principal, though in practice they saw to it that he submitted to the will of the Company, whether in matters of revenue or in transactions with foreign powers.

But in one respect, the attitude of the masters in Leadenhall Street differed from that of their servants in Bengal. While their principal servants from Clive and Verelst to Sykes and Becher had nothing but unstinted praise for Reza Khan's integrity, ability and attachment to the Company,⁶¹ the Directors were from the very beginning less friendly and more critical.

On the eve of his departure from Bengal, Clive eulogised him in the strongest terms. The marvellous increase in the collections in the year 1766 the Council attributed to Reza Khan's diligence and abilities. They were so pleased with his assiduity that they thought of showing him a distinguishing mark of favour. That they did not do so was only to avoid the Nawab's jealousy.

On the other hand, the Directors were not very happy at the news of his appointment. They felt that the Council had passed too lightly over the charge brought against him of being very deficient in accounting for the revenues of Dacca for the period he was Naib there in the regime of Mir Jafar.⁶² When the salaries of Reza Khan, Rai Durlabh and Shitab Ray were fixed by the Select Committee at Rs. 9 lakhs, Rs. 2 lakhs and Rs. 99,996 respectively and evidently Reza Khan's case was taken into special consideration, the Court admitted his merits

but considered Rs. 9 lakhs to be too large for any officer.⁶³ The enormous strain of his onerous duties told upon Reza Khan's health. But the Company's servants were not prepared to do without his service and in 1768, Fath Ali Khan was, therefore, appointed as his assistant. It was suggested by Sykes that Fath Ali Khan's allowance should be fixed at Rs. 7,000. While approving of this appointment, the Court expressed sympathy for Reza Khan's illness and appreciation for his satisfactory work. They even esteemed it "a singular instance of good fortune to have so able a minister to overcome all the difficulties consequential to so new an Office," but at the same time they refused to assign to his deputy any additional salary from the revenues and suggested that Reza Khan should yield a part of his big salary to the man who was to assist him in performing the duty he was amply paid for.⁶⁴

When the report that Reza Khan was unduly helping the senior servants of the Company in disposing of large quantities of cotton goods commissioned by them from Bombay reached the Directors, they were somewhat annoyed and demanded an explanation from the Governor.⁶⁵ During all these years, their minds were never free from the suspicion about his integrity, that was caused by the unadjusted balance of the Dacca revenue. They repeatedly reprimanded the Council for their remissness in making a proper investigation into the matter.⁶⁶ By April 1771, they were no longer in a mood to pay him an allowance of 9 lakhs.⁶⁷ They were disappointed with the collections from Bengal and came to believe that not only the service of Reza Khan as the Naib Diwan had been most disadvantageous to the Company, but also he had been guilty of the grossest peculation. All the previous assurances of their benign protection were, therefore, thrown to the winds. In fact, they had believed Bengal to be *El Dorado* and the frustration that followed made them look for a scapegoat.

On the night of 23 April 1772, Hastings received the Secret Committee's letter. As directed by them he kept it a secret in Calcutta and on the next day sent peremptory instructions to Middleton, Chief of the Murshidabad Council, to arrest

Reza Khan and his Diwan, Raja Amrit Singh, and send them to Calcutta. Middleton received these orders on the 26th and the next morning he deputed Anderson to arrest Reza Khan. He took all precautionary measures against any possible resistance on the part of Reza Khan or any commotion which, at that critical hour, the Nizamat servants or sepoys or the citizens of Murshidabad might put up. An officer with eight companies of sepoys was sent with Anderson. Accompanied by a part of his force and some companies of pargana sepoys, Middleton himself went to the Fort to explain the matter to the Nawab and obviate his consternation at this turn of events. But belying all apprehensions, Reza Khan resigned very calmly to the Company's orders. Along with Amrit Singh, he was sent under a guard to Calcutta.⁶⁸

The fact that the whole affair passed off so smoothly without the least tumult or resistance from any quarter, to the pleasant surprise of the English Government, calls for a few words of explanation.

For the past seven years, Reza Khan had exercised more powers than the Nazims themselves. He had enjoyed an annual salary of 9 lakhs and had the absolute disposal of the Nawab's stipend. All transactions used to pass under his seal and signature. His agents and creatures filled every office of the Nizamat and Diwani. His authority was much diminished in regard to the collections by the institution of Supervisors and Controlling Councils of Revenue, but still vast powers were concentrated in his person with a very imperfect check. His favour was still courted on all sides and his anger dreaded.

But in course of these seven years, he had also created a good many enemies at Murshidabad.⁶⁹ The immense powers vested in him were far from being welcome to the Nawab Nazims over whom he exercised absolute sway. Since his appointment as Naib Nazim and the dismissal of Nanda Kumar, the latter had borne him a grudge. To make matters worse, he came to have another influential person in the rank of his declared enemies. The Court of Murshidabad was so surcharged with jealousy, suspicion and intrigues, and both Reza Khan and

Munni Begum were so power-loving, that any conflict of interest was bound to break off their outward intimacy. So it came about over the control of the Nawab's household (Mahalsara).

Ever since Najm-ud-daulah became heir-apparent to the Nizamat after the death of Miran, Munni Begum rose to pre-eminence among the Begums and controlled the Nawab's household. This distinction she continued to enjoy during the regime of her sons, Najm-ud-daulah and Saif-ud-daulah. After Mubarak-ud-daulah's accession, this place of honour was contested by Babbu Begum. She represented to Governor Cartier her straitened circumstances. In obedience to Cartier's orders, Reza Khan and Becher visited her and put her in charge of the Nawab's household. Munni Begum's monthly allowance of Rs. 6,000 was divided equally between her and Babbu Begum. She was also deprived of some of her mahals. She took this disgrace and loss very much to heart. She attributed Babbu Begum's revolt against her tutelage and her own degradation to the instigation and contrivance of Reza Khan.⁷⁰

Her letters to the English Government since then were full of bitter complaints against Reza Khan. In one of these she alleged that Reza Khan had so monopolised all power that without a parwana from him, no body could lay a hand on a barley corn. He dismissed the old servants at pleasure and daily took measures that brought about her degradation. In case her grievances went unredressed, she wrote, "I swear by God and Jesus Christ, I will leave Murshidabad to go to the Committee because living in this disgrace is worse than death".⁷¹ But these expostulations were of no avail. In her despair, Munni Begum looked forward to the day, when Reza Khan would be out of power to make room for her.

Reza Khan's enemies were never inactive. In October 1767, Brigadier General Smith handed on to the Select Committee several Persian letters written in Reza Khan's name and under his seal, addressed to the Jat Chief, Jawahir Singh, and Gopen Ram. The Select Committee believed these mischievous letters to be an impudent forgery, yet Sykes was directed

to urge Reza Khan to submit the most convincing proofs of his fidelity.⁷³ His enemies did not stop there. Dark designs were formed against his life.⁷⁴

His name came to be associated with all corruption and confusion that marked the Dual System. The famine of 1769-70 further increased his unpopularity. The Nawab and his ministers collectively contributed Rs. 1,83,282-9-11 for a charitable distribution of rice among the famine-stricken people. Of this amount Reza Khan's personal contribution was no less than Rs. 19,507.⁷⁵ But he was so little loved by the people that all his good acts went unappreciated.

On the other hand, the exercise of many public duties during the famine was misconstrued by the people for private trade in grain.⁷⁶ It was a letter from Huzurimul, brother-in-law of Umichand, addressed to Robert Gregory, which particularly induced the Court to bring against Reza Khan the charge of monopoly of grain.⁷⁷ Besides their own economic frustration, the non-official information against Reza Khan appears to have impressed the Directors very much. As for Reza Khan, his only source of strength was the patronage of the Company and when that was withheld he had no other way than to yield with humility.

On 10 May 1772 Hastings wrote a letter to the Nawab requesting him to consider whether it was proper that Reza Khan should continue in the office of Naib Nazim, after he had been divested of the office of Naib Diwan on a suspicion of corrupt practices. The Chief and Council at Murshidabad were instructed to persuade the Nawab to dismiss him. As a result Reza Khan was removed from the office of Naib Nazim also.⁷⁸

As Shitab Ray had been too long connected with Reza Khan to be independent of him, he also was arrested and sent down to Calcutta. The Controlling Councils of Revenue were ordered to assume the direct charge of Diwani until proper plans were formed. A proclamation was issued to that effect on 11 May 1772.⁷⁹ On 14 May, the Council appointed a Committee of Circuit consisting of four members of the Council to go on circuit through the districts and form the five years'

settlements. Hastings proceeded with the Committee of Circuit on 3 June and first concluded the settlement of Nadia at Krishnagar and then went to Kasimbazar and stayed there till 17 September. On 28 July the Committee of Circuit recommended the abolition of the Murshidabad Council and the transfer of the supreme court of revenue (Khalsa) to Calcutta which was accordingly done in September.

No measure was, however, taken immediately to meet the emergency arising out of the removal of Reza Khan from the Nizamat. His stamp was on everything. The business of the Nizamat, particularly the judicial administration in Murshidabad as well as in mofussil, was suspended for want of a person properly authorised to confirm the decrees of the Adalats and pass sentences on criminals. A similar condition prevailed in various other matters which required the immediate interposition of the Nazim.⁷⁹ The Nazim also frequently represented to the Council the unsettled and disorderly state of his household.

Towards the middle of May 1772, Nawab Yehteram-ud-daulah, a younger brother of Mir Jafar and the surviving eldest member of his family, submitted a petition to the Murshidabad Council, stating that Munni Begum had sent for him from Rajmahal and requested him to accept the office of Naib Nazim, for she wanted to prevent any outsider from being nominated to that post. The Murshidabad Council forwarded this petition to the Council at Fort William and urged the necessity of appointing immediately a Naib to the Nazim.⁸⁰

But the Calcutta Council deferred the choice of a Naib Nazim for the time being and advised the Murshidabad Council to apply to the Nazim for authorising the officers of the Sadr Adalat to affix the seal of the Nizamat to the decrees of criminal courts. The Murshidabad Council was enjoined to take care about the manner in which the seal was applied.⁸¹ Consequently, the criminal proceedings pending for review were delivered to Maulavis of the Adalat. They were directed to examine them and report thereon to the Nawab in whose presence the ratification of the sentences was done in the usual form. The

proceedings were then returned to the Council to be sent to the districts for execution.⁸²

It was on 11 July 1772 that the Committee of Circuit sat at Kasimbazar to deliberate on the means of regulating the Nawab's household. As already mentioned, the Court's letter of 28 August 1771 enjoined the Council to choose a suitable minister for the Nawab's Court. The Committee of Circuit, on the other hand, judged that it was neither necessary nor desirable to delegate extraordinary permanent authority to any single minister of the Nawab with an annual salary of 3 lakhs of rupees merely for "giving eclat to the negotiations or authenticating the privileges of their rivals in trade."

The office of Naib Nazim comprehended every branch of executive authority. As such the exercise of extensive constitutional powers of Naib Nazim by a single person would only perpetuate "the rights and prerogatives of the ancient Government," and the people of Bengal instead of being used to the authority of the Company would look forward to the time when the Nawab would resume sovereignty. A divided government, the Committee held, could not last and would only lead to continuous contest and bloodshed. They, therefore, considered it their duty to provide for a gradual but total change of government, which would substitute "the real power" protecting the country in the place of the one which claimed possession of it by a right it was "unable to assert or support."⁸³ Although "difficult and invidious," this measure appeared indispensable to them and they wanted to avail themselves of the opportunity afforded by the Nawab's minority. Their considered opinion was, therefore, to retain in their hands the entire executive authority, accustom the people to the sovereignty of the English, to divide the "officer" of the Nizamat and "to suffer no person to share in the management of the Nawab's domestic affairs, who from birth, rank, personal consideration or from actual trust may have it in his power to assist his master with the means or even to inspire him with the hopes of future independence." On these grounds, the Naib Nazim's office was abolished.

It was then proposed that Munni Begum should be the

guardian of the Nawab and superintendent of his household with Raja Gurudas, son of Nandakumar, as her Diwan. Her pronounced dislike for Reza Khan rendered her the fittest person to eradicate his influence in the Nawab's household. Her authority would be confined within the walls of the Nawab's palace. As a woman she was incapable of passing the bounds prescribed for her. She had no children to intrigue for. Her authority would cease with the Nawab's minority. She would then have to depend absolutely on the Company. For her own interest, therefore, she must support "all the designs of the Company and . . . solicit their patronage." Indeed, she assented to everything the English Government did. By placing her in charge of the Nawab's household the English Government planned to make use of the Nawab's minority "to establish and confirm the Company's authority in the country." The appointment of Munni Begum was unanimously approved, while that of Raja Gurudas was opposed by the majority in the Committee of Circuit.

The implacable enmity which had long subsisted between Reza Khan and Nanda Kumar and the necessity of utilising the abilities of Nanda Kumar to collect evidence for substantiating the charges against Reza Khan and to counteract the influence still retained by Reza Khan over the government of the province and the Nawab's family, impelled Hastings to propose Gurudas to be the Diwan of the Nawab's household. Though Gurudas was himself young, inexperienced and mild, his nomination was opposed on account of his father's intriguing disposition and "uniform disaffection" for the Company. But it received the approbation of the majority of the Council at Fort William as well as of the Court of Directors.

On 11 August, Munni Begum and Gurudas were recommended to the Nawab. Obviously, no substitute was appointed in Reza Khan's place to run the administration of police and penal law. It is said that the Nawab had been previously advised by his counsellors to protest solemnly against these measures, to claim the administration of his own affairs, otherwise, to

declare his determination to abdicate and retire. Actually he did neither. His men were intimidated and he acquiesced in everything.⁸⁴

The amount of 3 lakhs of rupees which had been fixed by the Directors for the annual salary of Reza Khan's successor in the Nizamat was distributed in the following manner :—⁸⁵

	Rs.
Munni Begum	1,40,000
Raja Gurudas, Diwan and his officers	1,00,000
Raja Rajballabh, Rai Rayan of the Khalsa	60,000
	<hr/>
	3,00,000

At the same time, the Nawab's pension was considerably reduced. Convinced as they were that the annual stipend of 16 lakhs of rupees would be sufficient for the maintenance of the Nawab during his minority, the Directors declared any addition thereto to be a sheer waste on "a herd of parasites and sycophants." Under the orders of the Court, the Nawab's stipend was therefore curtailed to 16 lakhs. Thus was retrenched a good deal of expenditure not only on useless servants, parades of elephants and menageries, but also on the pensions of several hundreds of scions of the ancient aristocracy who, being excluded by the English Government from all employments, civil or military, depended solely on the bounty of the Nawab.⁸⁶

Another momentous measure that Hastings took in the first year of his office was the regulation of justice. He found that the Adalats of the Nizamat had continued to function, but their efficacy was destroyed by the 'ruling influence' of the Diwani. The regular course of justice was everywhere suspended and everyman who had the power of compelling others to submit to his decisions exercised judicial authority. The security of life and property is the greatest encouragement to industry on which the prosperity of a country

depends. Easy access to justice is one of the means by which such security can be obtained. But this was not possible under the circumstances which had hitherto prevailed. The administration of civil justice formed a part of the revenue administration which could not be placed on a sound footing without a thorough reform of the former. Moreover, as interpreted by Hastings, while the Nizamat and the Diwani were in different hands and all the rights of the former were admitted, the courts of justice could not be reformed. Hastings took it for granted that the separation of the two functions of the Government existed no longer. And this assumed reunion of the functions of the Nizamat and the Diwani formed the basis of his regulations.⁸⁷

On 15 August 1772 the Committee of Circuit at Kasimbazar drew up a new plan for the administration of justice. It consisted of thirty-seven Regulations and was approved by the President and Council at Fort William on 21 August.⁸⁸

The plan provided for the establishment of two Adalats in each district. The Diwani Adalat was to take cognizance of civil causes, *i.e.*, all disputes concerning property, whether real or personal, causes of marriage and caste, claims of debt, disputed accounts, contracts, partnerships, demands for rent and causes of inheritance excluding the right of succession to the zamindaris and talukdaris. This court was to be presided over by the district collector assisted by the Diwan of the district and other officers of the kachahri. It was to be held at least twice a week to determine causes in a regularly assembled and open court. The decree of this court was to be final on all causes of sums not exceeding Rs. 500. As the ryots could not afford to travel to the Sadr kachahri for justice over every trifling dispute, the head farmers of parganas were allowed to exercise a local jurisdiction in all petty disputes of property, not exceeding the sum of Rs. 10 and their decrees were to be final, although they had no legal right to such jurisdiction.⁸⁹

Certain proposals were made to discourage litigiousness and also the practice of exercising judicial authority by individuals

over their debtors. In all disputes of accounts, partnership, debts, bargains and contracts, arbitration was recommended and its award was to become a decree of the Diwani Adalat. The choice of the arbitrators rested with the parties concerned but the arbitrators were required to decide without any fee or reward. The collector was to afford them every encouragement but was never to coerce any body to be an arbitrator.

The other court proposed to be instituted in each district was the Faujdari Adalat. The plan specified the nature of causes cognizable by this court. Its jurisdiction extended over all crimes and misdemeanours, i.e., murder, robbery, theft and other felonies, forgery, perjury, and all sorts of frauds, assaults, frays and quarrels, adultery and every other breach of the peace or violent invasion of property. The Qazi and Mufti of the district and two Maulavis were to sit in a regularly assembled and open court to expound the law and decide the causes. The collector of the district was to exercise a sort of general superintendence over the procedure of this court and attend its proceedings to inspect whether necessary witnesses were summoned and duly examined and whether the decision passed was fair and impartial. This court was empowered to inflict corporal punishment, labour on the roads and fines, but not the death sentence. In all capital cases the evidence and defence of the prisoner as also the opinion of the court had to be submitted to the Sadr Nizamat Adalat for final determination.⁵⁰

The Committee judged it necessary to propose some exceptions to the orders of the Directors for the total abolition of fines in the criminal courts. All offences were not punishable with stripes. There were many persons guilty of petty misdemeanours whose superior rank or caste should secure their exemption from corporal punishment, but to suffer them to escape with impunity appeared to be an act of injustice; for such persons a special provision of fining was adopted. But if the fines exceeded Rs. 100 these were to be immediately reported to the Sadr Nizamat Adalat for its confirmation.

Thus by the establishment of inferior courts in each district an attempt was made to render the distribution of justice equal in every part of the province. There were to be as many Diwani and Faujdari Adalats as there were collectors who were vested with the right to preside over the local civil court and to prevent miscarriage of justice in the criminal court.

Another feature that characterised the Regulations was that they were based on the Mughal distinction of authority between the Nazim and the Diwan. To the Nazim was apportioned the criminal and to the Diwan the civil jurisdiction.

The Committee proposed two other courts at Calcutta on the same plan as that of the districts with the sole difference that the Diwani Adalat of Calcutta was to be presided over by a member of the Council and another member was to exercise a sort of general superintendence over the procedure of the Faujdari court there. These duties were to be performed by the members of the Council serving in rotation.⁹¹

Two superior courts were also to be established at Calcutta.⁹² The Sadr Diwani Adalat was composed of the united magistracy of the Adalat-al-Alia, Adalat Diwani and office of the Qazi.⁹³ It was empowered to hear appeals on all civil causes of sums exceeding Rs. 500. The President with two members of the Council was to preside over this court attended by the Diwan of the Khalsa, the head Qanungo and other officers of the kachahri. In case of the President's absence a third member of the Council was to sit along with the other two members so that no less than three members were to decide on an appeal.

The Sadr Nizamat Adalat was presided over by the Darogha-i-Adalat (Chief Judge) appointed by the Nazim and assisted by the Qazi-ul-Quzat (Chief Qazi), the Chief Mufti and three capable Maulavis. Their duty was to revise all the proceedings of the Mufassal Faujdari Adalats. In capital cases they were to signify their confirmation or otherwise of the sentences recommended by the Mufassal Adalats and to prepare the sentences for the warrant of the Nazim who was the ultimate judge of all such causes. They were then to return the Nazim's decrees

to the mofussil for local execution. This Adalat also decided finally on all causes involving forfeiture and confiscation of property and on all persons punished with fines exceeding Rs. 100. To prevent any perversion of justice, it was arranged that the proceedings of this court would be conducted under the supervision of the Governor and Council at Fort William.⁹⁴

The Committee aimed at rendering the access to justice as easy and early as possible and proposed that the collectors should at all times be ready to receive the petitions of the injured and a box should be placed at the door of the kachahri so that the people might drop their applications in it at any time.

Complete records of all causes were required to be preserved in the Mufassal Diwani and Faujdari Adalats. The copies and abstract registers of all proceedings were to be sent twice a month to the respective Sadr Adalats through the President and the Council at Fort William. By this practice it was hoped that the judicial institutions would remain free from negligence and corruption from which they had been hitherto suffering.

One important recommendation of the Committee was that in suits regarding inheritance, marriage, caste and other religious usages, the laws of the Quran should be applied to Muslims and those of the Shastras to the Hindus. On all such occasions, the Maulavis or Brahmins were respectively to expound the laws and assist the court in passing the decree.

Moreover, the custom of levying "the detestable and authorized" Faujdari Bazi Jama and also commission on all debts and on the value of all property recovered, was totally abolished. The practice of composing serious crimes by arbitrary fines was declared illegal. Both the Haldaree or custom on marriage and Russoms or fees paid to the Qazi and Mufti had proved a standing grievance to the poor and an impediment to marriage. Haldaree had been abolished on 28 June by the Committee at Krishnagar. It was now strongly declared that no Qazi or Mufti could accept any fee except on pain of dismissal with marks of public disgrace. He was to discharge all the customary functions in the capacity of an Adalat officer with a fixed monthly

salary which was granted in lieu of Russoms. The office of "Yetasaub"⁹⁵ having become obsolete was totally abolished.

Provision was also made for the suppression of dacoity by drastic steps. For some years past the tranquillity of the country had been seriously menaced by gangs of dacoits. The Committee realised that if crimes were to be arrested not only the actual perpetrators thereof, but also the remote aiders and abettors should be punished. The 35th Article in addition to the death penalty on the convicted dacoit provided for collective fine on the entire village of which he was an inhabitant, as also for the family of the dacoit being relegated to slavery of the state.⁹⁶ The enormity and iniquity of thus penalising the innocent for the fault of the guilty was justified by the Committee on the ground that in this country dacoity was practised as a hereditary calling and that these dacoits formed regular communities and their families subsisted on their spoils.

As a good foundation for a more complete system of judicature, the plan of 1772 does credit to the infant legislators of the Company. True, it was lacking in the quality of legal perfection. It was based on the plain principles of experience and common observation without the advantages which more time and more knowledge of the theory of law might have afforded its framers. Necessity compelled them to form some regulations and they chose the best they could and pleaded, "we have endeavoured to adapt our regulations to the manners and understandings of the people, and exigencies of the Country, adhering, as closely as we are able, to their ancient usages and institutions."

Its immediate effects were, therefore, not to alter the framework of the country courts of judicature, but to distinguish clearly the civil and criminal jurisdictions and remove the supreme courts of justice from Murshidabad to Calcutta. It not only placed the administration of civil justice under the direct management of the Company's servants, but also vested in the Council at Fort William and the district collectors the powers of general superintendence over the Sadr Nizamat Adalat and the Mufassal Faujdari Adalats respectively. The mask was not put off

altogether and to obviate the reproach of irregularity, the power of the Nazim to issue Sanads for the appointment of officers of the Sadr Nizamat Adalat and also his right to confirm or alter the death sentences were carefully preserved ; yet with the transfer of the superior courts and the collections, Calcutta became the virtual capital of Bengal and the centre of all power and government of the province.

The criminal administration being the sole sphere of the Nazim, the interference in the criminal courts as also the transfer of Sadr Nizamat Adalat to Calcutta might be surely regarded as a "usurpation", "almost an act of injustice" and Hastings himself admitted that.⁹⁷

In vindication of this step he argued that criminal justice was so connected with the revenue and the Mahomedan courts were so abominably venal, that it was necessary and unavoidable, and it met with no opposition. Had these courts been left to the Nawab, they would be the sources of corruption and oppression and their officers would perpetually interrupt the collections. The collectors, zamindars and farmers would for ever quarrel with the ministers and dispute their authority. Numerous evils would attend the exercise of a power which could not support itself nor enforce its own decrees, and subsisted only by the sufferance of the Company. So, "to avoid a great evil", as Hastings put it, "and that justice might have a footing by hook or by crook in Bengal, we chose the less evil, and took her under our own protection."⁹⁸

References

1. Used by the Nawabs of Bengal from the days of Sultan Shuja, son of Shah Jahan, this throne of black stone is now preserved in the Victoria Memorial Hall of Calcutta. Drops of some reddish liquid used to come out from certain parts of this throne leaving stains when dried up, due perhaps to the presence of iron. According to popular belief, however, this was regarded as the tears of the Nawabs of Bengal flowing ever since the grant of the Diwani to the Company.

2. *Seir*, Vol. III, p. 13.

The translator of *Seir Mutagherin* was passing by the Nawab's gate at that very time and was stopped by the crowd, to the outbursts of whose grief and rage he was thus an eye-witness. Thereafter he went to the house of

Aga Ali, an eminent neighbour of his and saw there a group of distinguished visitors, all attached to Reza Khan. He told them that the general report accused Reza Khan strongly and asked their opinion. "Ha ! Sir," remarked one of the group, "the physicians are all of his cabal—all Moghuls.....", but here he was interrupted by Aga Ali who said, "People do not talk of such matters at Moorshoodabad" and the query remained unanswered.

3. Letter to Court, 8 Sept. 1766.

This laconic statement failed to satisfy the Directors, for even in England, it was publicly hinted that the Nawab had been poisoned. The Directors, therefore, ordered the Select Committee to submit details of the circumstances preceding and following Najm-ud-daulah's death.

(Letter from Court, 16 March 1768. Pub. Dept. I.O. Records, Bengal Despatches, Vol. 4).

4. His age, "more immediately and naturally", wrote the Select Committee, "brings the administration into the hands of persons in whom we can repose confidence." (Letter to Court, 8 Sept. 1766).

5. Aitchison, *op. cit.*, Vol II, pp. 245-46.

6. Letter from Court, 16 March 1768.

Pub. Dept. I.O. Records, 1768, Bengal Despatches, Vol. 4.

7. The successive mishaps in the family of Mir Jafar led Dow to make some sarcastic remarks which had since then become infamous. "The Princes", writes Dow, "whom we raised in Bengal, vanished imperceptibly from their thrones. Light and unsubstantial, as the show of power with which as in derision we invested them, they disappeared like Romulus, but without a storm.....Nabobs to own the truth, are useless and they are dismissed to their fathers without either ceremony or notice."

(Dow, *op. cit.*, Vol. III, p. lxxxix.)

8. Aitchison, *op. cit.*, Vol. II, pp. 246-47.

This was the last of the treaties concluded by the Company with the Nawabs Nazims of Murshidabad.

9. Letter to Court, 8 Sept. 1766.

10. *Seir*, Vol. III, p. 13 ; C.P.C., Vol. II, No. 1640.

11. Letters to Court, 30 Sept. 1765 and 24 Jan. 1767 ; Letter from Court, 17 May 1766.

12. Sel. Com. Progs., 31 Dec. 1766 ; Letter to Court, 24 Jan. 1767 ; Letters from Court, 16 March and 11 Nov. 1768 ; Fourth Report from the Committee of Secrecy, 1773, p. 102 and Appendix No. 3, p. 121.

13. Seventh Report, 1773, p. 326.

The Committee of Secrecy, however, was sceptical about any effect that resulted from this course towards the better administration of justice.

14. To cite an instance from Midnapur, certain cruel murders were committed there in the middle of 1768, the culprits were committed to prison, facts were fully proved and the murderers confessed their guilt. The Resident of Midnapur desired to hang them for the sake of example

and wrote to the Collector-General on 9 July 1768 for approbation. The latter consulted the President who considered an application to the Council unnecessary and directed that the culprits ought to be tried in the Faujdari Adalat at Midnapur. If the facts were proved there, they must be condemned to death. In that case the Resident was desired to order them to be executed in such a manner as might deter others in future.

15. Seventh Report, 1773, p. 326.
16. *Ibid.*
17. Letter from Court, 11 Nov. 1768 ; Letter to Court, 30 Sept. 1769 ; Sel. Com. Progs., 8 July, 11 Aug., 16 Aug., 1769.
18. Letters from Court, 16 March 1768 and 30 June 1769.
19. Letter from Court, 30 June 1769 ; Progs. C.C.R., Murshidabad, Vol. I, pp. 2-5.

These three Commissioners had embarked on 30 September 1769 on board H. M. frigate, the *Aurora*. After leaving the Cape towards the end of the year, the frigate was never again heard of. The Commissioners were not destined to reach India.

20. Sel. Com. Progs., 16 Aug. 1769 ; Secret Cons., 4 Sept., 1769 ; Verelst *op. cit.*, Appendix No. 134., pp. 229-30, 237-39.
21. Sel. Com. Progs., 8 July, 11 Aug., 16 Aug., 1769.
22. Letter to Court, 23 Nov. 1769, 8 Sept. 1770 ; Letter Copy Book of the Resident at the Durbar, Vol. I, pp. 117-119, 137 ; Progs. C.C.R., Murshidabad, 27 Sept., 1 Oct., 1770, Vol. I, pp. 3, 15.
23. Letter from Court, 30 June 1769 ; Progs. C.C.R., Murshidabad, 1 Oct. 1770.
24. Progs. C.C.R., Murshidabad, 1 Oct. 1770 ; Secret Cons., 11 Oct. 1770, 17 Jan. 1771.
25. Progs. C.C.R., Murshidabad, 22 Oct. 1770.
26. Secret Cons., 4 Feb. 1771 ; Jekyl's evidence, Seventh Report, 1773, p. 326 ; Progs. of the Controlling Committee of Revenue at Fort William, 21 May 1771.

This letter is wrongly dated June, 1771, in the Seventh Report.

27. It is doubtful whether these regulations were upheld by the Council. Letter Copy Book of the Supervisor of Rajshahi at Nator, pp. 3, 4, 12. (Letters from Rous, 21 Jan. and 26 March, 1770) ; Seventh Report, 1773, p. 327 ; Progs. C.C.R., Murshidabad, 7 Feb. 1771, Vol. III, pp. 140-43. (Letter from Rous, 19 Jan. 1771).

Gomastah—a factor, or agent,

Talukdar—petty zamindar, holder of a taluk,

Ganj—a market, a mart.

28. Letter Copy Book of the Resident at the Durbar at Murshidabad, Vol. II, p. II. (Letter from Rous, 25 Aug. 1770) ; Seventh Report, 1773, p. 327.
29. Progs. C.C.R., Murshidabad, 11 March 1771, Vol. IV, pp. 76-77

(Letters from and to Rous, 10 March, 11 March, 1771) ; Seventh Report, 1773, p. 328. The exact punishment meted out to Alauddin by the Naib Nazim is not, however, mentioned in the records.

It can be noted that about the same time, one Ramjee was condemned to the capital punishment by the Purnea Adalat for the murder of a child for the sake of some silver ornaments. See Progs. C.C.R., Murshidabad, 25 Feb. 1771, Vol. IV, p. 20.

30. Progs. C.C.R., Murshidabad, 13 Dec. 1770, Vol. II, pp. 66-67. (Letter from Ducarel, 3 Dec. 1770).

It will be noticed that places in Bihar and Orissa are frequently mentioned in the present work. The reason is that they were united to Bengal since the time of Nazim Azim-us-shan (1697-1712).

31. Progs. C.C.R., Murshidabad, 25 Feb., 25 March, 1771, Vol. IV, pp. 19-21, 134-36.

(Letters from Ducarel, dated 18 Feb., 11 March, 1771 and Letters to Ducarel, dated 25 Feb., 25 March, 1771) ; Seventh Report, 1773, pp. 327-28.

32. Letter Copy Book of the Resident at the Durbar at Murshidabad, Vol. II, pp. 1-2, 16 (Letters from Rider, 14 Sept., 20 Sept. 1770) ; Progs. C.C.R., Murshidabad, 4 Oct., 22 Oct., 28 Nov., 1770, Vol. I, pp. 24, 89-90, 247.

33. Progs. C.C.R., Murshidabad, 4 March 1771, Vol. IV, pp. 54-55 (Letter from Rider, 28 Feb. 1771 and Letter to Rider, 4 March 1771), Seventh Report, 1773, p. 328.

34. Seventh Report, 1773, p. 328.

35. Letter Copy Book of the Resident at the Durbar, Vol. I, p. 56. (Letter from Harwood, Supervisor of Bhagalpur, 23 May, 1770) ; *Ibid*, Vol. II, pp. 4-5, Letter from Grose, Supervisor of Rangpur, 20 Aug. 1770.

36. Progs. C.C.R., Murshidabad, 4 Feb. 1771, Vol. III, p. 110.

37. *Ibid*, 4 April 1771, Vol. V, p. 21.

38. Chittagong District Records, Vol. I, Part II, p. 69 ; Progs. Com. of Circuit, Dacca, Vol. IV. p. 130.

39. Letter Copy Book of the Resident at the Durbar, Vol. I, p. 53. (Letter from Supervisor of Bhagalpur and Rajmahal, 23 April 1770). Amil—a collector or farmer of revenue, superintendent of a district.

40. Letter Copy Book of the Resident at Durbar, Vol. II, p. 7. (Letter from Wilmot, Supervisor of Jessore, 29 Aug. 1770).

41. Progs. C.C.R., Murshidabad, 19 Nov. 1770, Vol. I, p. 208.

42. Sel. Com. Progs., 30 April 1767, 19 July 1770 ; Letter Copy Book of the Resident at the Durbar, pp 1-2 ; Progs. C.C.R., Murshidabad, 11 Feb. 1771, Vol. III, p. 155 ; Chittagong District Records, Vol. I, Part I, PP. 73, 74-75, 103 ; J. M. Ghosh, *Sannyasi and Fakir Raiders in Bengal*.

Their earliest recorded raid in Bengal was in 1760. They continued to infest this country throughout the second half of the 18th century.

43. Secret Cons., 3 Dec. 1770 ; Progs. C.C.R., Murshidabad, 10 Dec. 1770, Vol. II, pp. 35-36 ; *ibid*, 13 Dec. 1770, Vol. II, p. 58.

Removal of Faujdare was first proposed by the Murshidabad Council. Reza Khan and Becher gave their consent. The Calcutta Council approved of this proposal on 3 Dec. 1770.

- Progs. C.C.R., Murshidabad, 29 Oct. 1770, Vol. I, p. 139 ; *ibid*, 20 Nov. 1770, Vol. I, p. 212.

44. Letter Copy Book of the Resident at the Durbar, p. 4-5 (Letter from Supervisor of Rangpur, 20 Aug. 1770).

45. Progs. C.C.R., Murshidabad, 6 Dec. 1770, Vol. II, p. 28.

46. Letter Copy Book of the Resident at the Durbar, Vol. II, p. 7. (Letter from Wilmot, 29 Aug. 1770).

47. Progs. C.C.R., Patna, 27 July 1771.

48. Progs. C.C.R., Murshidabad, 28 March 1771, Vol. IV, pp. 147-49.

49. *Ibid*, 30 Sept. 1771, Vol. VII (A), pp. 95-96.

50. *Ibid*, 11 Feb. 1771, Vol. III, pp. 155, 157.

51. *Ibid*, 17 Dec. 1770, Vol. II, p. 84.

52. Letter Copy Book of the Resident at the Durbar, Vol. II, pp. 4-5 (Letter from Grose, Supervisor of Rangpur, 20 Aug. 1770) ; Progs. C.C.R., Murshidabad, 28 Feb. 1771

53. Progs. C.C.R., Murshidabad, 17 Dec. 1771, Vol. VIII, pp. 43-44.

54. Rangpur District Records, Vol. I, p. 8.

55. General letter from Court, 10 April, 1771 ; Pub. Cons., 20 Dec. 1771 ; Progs. C.C.R., Murshidabad, 4 Jan. 1772 ; General letter to Court, 9 March 1772 ; Seventh Report, 1773, pp. 328-29.

56. Progs. C.C.R., Murshidabad, 6 April 1772.

57. *Ibid*, 20 April 1772.

58. *Ibid*, 4 May 1772 ; Seventh Report, 1773, p. 330.

59. General Letter from Court, 28 Aug. 1771.

60. Letter to Hastings from the Secret Committee of the Court of Directors, 28 Aug. 1771. Gleig, *Memoirs of the Life of the Right Hon. Warren Hastings, first Governor-General of Bengal*, Vol. I, pp. 220-24; Secret Cons., 28 April 1772.

The Court's letter of 28 August 1771 charged Reza Khan with

- (a) monopoly of grain during the famine of 1769-70,
- (b) misappropriation of the Dacca revenue in the time of Mir Jafar,
- (c) misappropriation of the Diwani revenues and
- (d) misappropriation of the Nawab's stipend.

Later on, a fifth charge was added, namely, treasonable correspondence with the Mughal Emperor and the Marathas.

61. Sel. Com. Progs., 16 Jan. 1767 ; Verelst, *op. cit.*, pp. 62-63; Letter Copy Book of the Resident at the Durbar, Appendix VII ; Secret Cons., 25 Sept. 1769 ; Letters to Court, 31 Jan., 8 Sept., 1766 and 24 March 1767.

62. Letter from Court, 19 Feb. 1766.
63. Letter to Court, 24 Jan. 1767 ; Letter from Court, 17 March 1769.
64. Letter to Court, 9 Feb. 1768 ; Sel. Com. Progs., 16 Feb., 17 Nov., 1768 ; Letter from Court, 11 Nov. 1768; Pub. Dept. I.O. Records, Bengal Despatches, Vol. 4, p. 229.
65. Letter from Court, 11 Nov. 1768 ; Letter to Court, supplement, 25 April 1769.
66. Letter from Court, 19 Feb. 1766 ; *ibid*, 10 March and 11 Nov. 1768 ; *ibid*, 17 March 1769 ; *ibid*, 10 April 1771.
67. Letter from Court, 10 April 1771.

In a confidential letter to Hastings on 16 April 1773, the Secret Committee of the Court of Directors wrote that they had been "long sensible of the utter impropriety of lodging an absolute power" in Reza Khan's hands.

68. Secret Cons., 28 April 1772 ; Letter from Hastings to the Secret Committee of Directors, 1 Sept. 1772. (Gleig, *op. cit.*, Vol. I, pp. 246-47).

69. "I am aware", wrote Hastings, "of the violent prejudices which were taken up.....against Mahomed Reza Cawn by all ranks of people both here and at home." (Hastings to the Secret Committee of the Court of Directors, 24 March 1774 ; Bengal Letters, Vol. 12, p. 416).

70. C.P.C., Vol. III, Nos. 208, 224, 226, 231, 245, 256, 264-65, 276-77 ; *Seir*, Vol. III, pp. 26-27.

The author of *Seir Mutagherin* who had a personal grievance against Reza Khan, no doubt, charged him with a motive to "pull down that princess (Munni Begum) whose lofty spirit and extensive influence had given him much umbrage." Reza Khan's secret hand in this affair cannot, however, be exactly proved from the available records. On the contrary, it is on record that when asked by Cartier, he suggested that it would be better if the two Begums were given equal rank and authority. It was Cartier who decided that the control of the Nawab's household should be vested in Babbu Begum and Reza Khan only obeyed his orders.

71. Progs. C.C.R., Murshidabad, 17 Dec. 1770, Vol. II, pp. 95-97 ; *ibid*, 3 Jan. 1771, Vol. III, pp. 10-11.

72. Sel. Com. Progs., 27 Oct. 1767 ; C. P. C., Vol. II, No. 605.

It may be noted that Brig. Smith was himself very adverse to Reza Khan. In a minute in October 1769 he vehemently attacked "the lame manner" in which Reza Khan had endeavoured to exculpate himself in an enquiry into the Dacca affair. He also questioned the propriety of continuing an extravagant allowance of 9 lakhs to a minister at the beck and call of the Company and remarked that even presuming that Reza Khan had "the most superlative degree of merit, that merit has been most superlatively rewarded."

(Secret Cons., 20 Oct. 1769).

73. After his escape from one such attempt, the Governor directed Sykes to assist Reza Khan in tracking out the origin of the conspiracy. (C.P. C., Vol. II, No. 679).

74. Progs. C. C. R., Murshidabad, Vol. II, p. 118. (Letter from Becher, 24 Dec. 1770.) ; *ibid.*, Vol. III, p. 8 ; Sel. Com. Progs., 1 Feb. 1771.

75. The belief which prevailed in the country of his being concerned in monopoly of grain had its genesis mainly in the following facts :—

He was in charge of receiving and selling 80,000 mds. of rice imported on the Company's account from Bakarganj. He was required to procure rice for the Company's troops and the alms-houses of Murshidabad. In order to save the city of Murshidabad from scarcity of rice, Reza Khan took measures to control the export of rice from the feeder districts and from time to time fixed the price and quota of rice sold in the markets of Murshidabad.

Secret letter to Court, 16 Aug. 1773, Para 12 ; Secret and Separate Cons., 3 March 1774 for the opinions of Dacres and Vansittart.

76. Letter to Hastings, from the Secret Committee of the Court of Directors, 28 Aug. 1771. (Gleig, *op. cit.*, Vol. I, pp. 223-24).

In course of the trial of Reza Khan, Hastings summoned Huzurimul to substantiate his allegation. After much timid hesitation and procrastination, he at last disavowed it. Hastings conjectured that he was misled by the clamours of the people.

(Hastings' Letter to the Secret Committee of the Court of Directors, 24 March 1774, Bengal Letters, Vol. 12, p. 416.)

77. Secret Cons., 7 May, 16 May, 1772 ; Hastings to Josias Dupre, 8 Oct. 1772. (Gleig, *op. cit.*, Vol. I, p. 261.) ; C.P.C., Vol. IV, Nos. 22, 25.

78. Progs. C.C.R., Murshidabad, 7 May, 11 May, 1772, Vol. XI, pp. 1, 15-17.

79. *Ibid.*, 18 May 1772, Vol. XI, p. 52.

80. *Ibid.* ; Secret Cons., 21 May 1772.

In Hastings' own words, Yehteram-ud-daulah was "a man indeed of no dangerous abilities, nor apparent ambition, but the father of a numerous family."

(Hastings to the Secret Committee of the Court of Directors, 1 Sept. 1772 ; Gleig, *op. cit.*, Vol. I, p. 253.)

81. Progs. C.C.R., Murshidabad, 28 May 1772, Vol. XI p. 89.

82. *Ibid.*, p. 90.

83. "The truth is", wrote Hastings on the above issue, "that the affairs of the Company stand at present on a footing which can neither last as it is nor be maintained on the rigid principles of private justice. You must establish your own power, or you must hold it dependent on a superior, which I deem to be impossible." (Hastings to the Secret Committee of the Court of Directors, 1 Sept. 1772).

84. Progs. Com. of Circuit, Kasimbazar, 11 July, 26 July, 28 July, 11 Aug., 1772 ; C.P.C., Vol. IV, Nos. 68-69 ; Secret Cons., 6 Aug. 1772 ; General letter to Court, 5 Sept. 1772 ; Secret letter from Court, 16 April 1773 ;

Appendix 4 to the Fifth Report from the Committee of Secrecy, 1782
 Gleig, *op. cit.*, Vol. I, pp. 246-54, 261-62, 269-71.

85. Progs. Com. of Circuit, Kasimbazar, 7 Sept., 14 Sept., 1772.
86. Letter from Court, 10 April 1771; Progs. Com. of Circuit, Kasimbazar, 7 July, 7 Sept., 1772; C. P. C, Vol. IV, Nos. 56, 67; Secret Letter to Court, 10 Nov., 1772.
87. Letter to Court, 3 Nov. 1772.
88. Progs. Com. of Circuit, Kasimbazar, 15 Aug 1772; Secret Cons., 21 Aug. 1772; Seventh Report, 1773, pp. 330, 345-51.

89. This provision was a single exception to the general rule of confining judicial power to the two courts of Adalat. But as this was restricted to cases of property not exceeding Rs. 10 and as the head farmers had no power of inflicting punishment or levying fines, there was little chance of ill use being made of so inconsiderable a privilege, specially as they themselves were amenable to the court of justice.

90. The monthly establishment of the Faujdari Adalat of each district as approved by the Committee of Circuit at Kasimbazar on 29 Aug. 1772, was as follows :—

1 Qazi	Rs. 100
1 Mufti	" 50
2 Maulavis at Rs. 50 each.	" 100
2 Muharrirs at Rs. 20 each.	" 40
1 Mirdaha.	" 7
5 Peons at Rs. 4 each.	" 20
4 Deputy Qazis at Rs. 20 each.	" 80
Paper, ink etc.	" 5
	<hr/> Rs. 402

The actual establishment of the Faujdari Adalats varied according to local requirements. For instances :—

- (i) Faujdari Adalat at Murshidabad ... (Progs., Com. of Circuit, Kasimbazar, Vols. II-III, p. 208),
- (ii) Ditto Ditto at Jahangirpur ... (Rev. Cons., 12 March 1773, I. O. Copies (1722-74), Range 49, Vol. 38, pp. 115-16),
- (iii) Ditto Ditto at Hugli. ... (Rev. Cons., 20 Nov. 1772 and Rev. Cons., I.O. Copies, Range 49, Vol. 38, p. 1174).
- (iv) Ditto Ditto at Rangpur. ... (Progs. Com. of Circuit Rangpur, Vol. 5, p. 22),
- (v) Ditto Ditto at Dinajpur ... (*Ibid.*, Dinajpur, 26 Jan. 1773, Vol. 6, p. 90)

91. In practice, however, the Diwani Adalat was placed under a covenanted servant under the Council.

92. The expression "the Chief Seat of Government" in the 5th Article of this plan misled some writers like Harington, Peter Auber and Cowell who have stated that the Sadr Nizamat Adalat was established at Murshidabad.

See Harington, *op. cit.*, Vol. I, p. 299 ; Peter Auber, *An Analysis of the Constitution of the East India Company*, p. 278. Cowell, *The History and Constitution of the Courts etc.* p. 31.

93. At this time, the Diwani Adalat was working as the only effective tribunal, the Adalat-al-Alia or the Nazim's Court "existing only in name" (Progs. Com. of Circuit, Kasimbazar, 15 Aug., 1772.)

94. The following monthly establishment of the Sadr Nizamat Adalat was approved by the Committee of Circuit at Kasimbazar on 29 August 1772 :—

1 Daroga	Rs. 1,000
1 Qazi-ul-Quzat	" 750
1 Head Mufti	" 350
3 Maulavis at Rs. 200/- each.	" 600
2 Muharrirs at Rs. 40/- each.	" 80
Paper, ink and petty charges,	50
	Rs. 2,785

95. Muhtasib (?)

Superintendent of weights and measures in the markets.

96. According to Harington, the death penalty provided for the culprit himself was strictly consistent with Siasat and the fine upon the village was also justifiable under certain circumstances ; but the disposal of the criminal's family to pass their lives in slavery without any proof of their guilt could not be reconciled with justice or humanity.

(Harington, *op. cit.*, Vol. I, p. 300.)

97. These Regulations were referred to by Hastings in support of his denial of the Nawab's sovereignty which became a matter of controversy in the case of Radhacharan (June 1775). Hastings asserted that in 1772 regular courts of justice, civil and criminal, were constituted by his Government "without consulting the said Nabob or requiring his concurrence." The same opinion was given by Vansittart. (Affidavits of Hastings and Vansittart).

See *Examination into the claims of Ray Radhacharan etc.* pp. 13-15.

98. Progs. Com. of Circuit, Kasimbazar, 1772, Vols. I-III, pp. 118-23 ; Letter to Court, 3 Nov. 1772 ; Hastings to Josias Dupre, 8 Oct. 1772 and 6 Jan. 1773 (Gleig, *op. cit.*, Vol. I, pp. 263, 271-73).

CHAPTER IV

CRIMINAL ADMINISTRATION : 1773-1775.

The Sadr Nizamat Adalat was not opened before the first week of January 1773. This court was headed by the Daroga or the Chief Justice. During his stay at Kasimbazar, Hastings had offered this office to Sadrul Haq Khan,¹ but he refused it. It was then thought proper to give him a similar post in the Murshidabad Adalat, but the vacancy there had already been filled up. Hastings therefore renewed his offer and this time it was accepted. The other persons, whom the Council recommended for the same establishment were : Muhammad Shakir Khan to be the Chief Qazi (Qazi-ul-Quzat), Ahmad Ali to be Mufti and Muhammad Fazil, Muhammad Sajid, and Mir Buzurg Ali to be Maulavis.² Great care was taken by the Council in selecting the most learned in the Islamic Law to sit as judges in this court. "For the sake of preserving the ancient and constitutional forms of the Country Government," letters were written on 29 December 1772, to Munni Begum and the Nawab, requesting confirmation of these appointments. The Nawab having granted Sanads of approval, on 5 January 1773, the Council directed the nominees for the Nizamat Adalat to be present on the next Council day to receive khilats and other customary marks of investiture. Arrangements were made for transmitting all capital cases to the Nawab for his warrants of execution. At another period, the Council might have considered "the continuance of these forms" as too great a concession to the Nawab and a dangerous acknowledgment of his superiority, but these objections had no weight at that time as the Nawab was entirely within the control of the Company who knew for certain that in case of any inconvenience, they could easily alter these arrangements.³

It was not without great difficulty and delay that Hastings could prevail upon the new officers to open their court. At

their earnest request, he attended the opening ceremony of the Sadr Nizamat Adalat in order to introduce them, notwithstanding his desire to avoid any show of the influence of the Company in this particular sphere. On the same principle he cautiously abstained from any act of authority over that court and always left the judges at liberty to take their own decisions. The establishment was yet in its infancy and like every other innovation, it was liable to unavoidable delay. From the very start, Hastings therefore took care that this "sacred" charge might not suffer from neglect or unnecessary procrastination. He urged the judges to do their functions properly and before their fatwas (decrees) were submitted to the Nawab at Murshidabad for his final sentence and warrant, he used to review them and offer his comments thereon. At the outset there was no register of Qazis and Muftis. The Qazi-ul-Quzat was therefore directed to draw up a complete list of the Qazis and Muftis acting under his authority. Whenever any alteration or addition of personnel was thought necessary, it was made with the approval of the Governor and the list of appointments was forwarded to the Superintendent of the Khalsa.⁴

As the decrees of the Sadr Nizamat Adalat in its first proceedings were expected to serve as precedents for all future cases, Hastings spent much time in revising them in the presence of the Daroga. The decrees that appeared to him disproportionate to the offences or injurious to public peace, were referred back to the judges for reconsideration. The proceedings were then returned to him, some with the former sentences confirmed and others with the different interpretations of the law annexed to them. Hastings was unable to persuade them to depart from their traditional interpretation of the Quranic Law. All that he could do was to prevail on them to leave the final decision of punishment to the Nazim. The proceedings were accordingly passed on to the Nazim by Daroga Sadrul Haq Khan along with a letter from Hastings requesting him to affix his warrants to them without delay. At the same time he sent to Middleton, Resident at the Durbar, an abstract of the proceedings with his

remarks for communicating them to Munni Begum and the Nawab before the latter signed the warrants.⁵

Direct association with the Sadr Nizamat Adalat gave Hastings opportunity to observe closely the nature and degree of the punishments inflicted by the Mahomedan courts for various capital crimes. The abstract of the first trials of the Sadr Nizamat Adalat including his own suggestions makes an interesting study.

Out of the twenty-four convicted dacoits, no less than twenty-one were sentenced to death, thirteen by first losing the "hand and foot" and the rest with or without that punishment.⁶ Two other dacoits, namely, Banhoor and Koober Jamadar were punished with 30 stripes with imprisonment and "stripes or imprisonment" respectively.⁷

Curiously enough, one Ramma Gaut Mangu was neither prosecuted nor formally tried, although he had committed dacoity and murder and the charge against him was proved by the confessions of Banhoor and the culprit himself. He got off unpunished only because he had confessed his guilt. Naturally Hastings proposed a formal trial for him.

Two persons were convicted of adultery. For adultery with Kidwa and attempt to cut her husband's throat, Beyee, wife of Nemay was condemned to Rajm or stoning to death, while in the case of Kidwa, an alternative punishment was allowed. The sentence against him was "Rajum (Rajm) if married, or to receive 100 lashes."⁸

Of the six cases of homicide recorded in the list, none of the culprits was punished with death and the fatwas awarded merely Diyat.⁹ The inadequacy of this punishment may be illustrated by a single instance. One Ramma confessed that he had suffocated the seven-year old daughter of Dewal by holding her under water and had then stolen the ornaments from her body. Hastings recommended death for this cold-blooded murder.

In two cases only, the murderers appeared to him to be perfectly innocent and in place of Diyat he proposed their acquittal. One of them was Khan Muhammad and the other Yacoob.

Khan Muhammad so beat his slave girl that she died. "It does not appear", argued Hastings, "that there was any intention of murder and Mahomedan Law as well as ours admits of moderate correction to a slave or even a hired servant." As for Yacoob, he was obviously innocent. At dead of night he suddenly awoke from sleep and was seized with alarm on finding a man in his apartment, whom he killed immediately.⁹

An extraordinary concomitant of most of the trials was that every malefactor confessed his guilt. This greatly surprised Hastings and he wanted Middleton to obtain some account of the manner in which the confession was procured—whether by extortion or by promises of pardon.

Hastings left Calcutta on 25 June 1773, accompanied by Sadrul Haq Khan and halted at Murshidabad on his way to Benares. He made immediate enquiries there regarding the proceedings that had been submitted to the Nawab just before a month and came to know that the latter had not yet put his seal and signature on them. The delay was deliberate. The reason was that without consulting the Governor, the Nawab hesitated to confirm those decrees to which the former had objected; nor could he give a different judgment as he had been advised not to deviate from the Quranic Law. So he waited till the Governor's arrival. Hastings told the Nawab to follow the "advice which was given him" and immediately sign the decrees. He did so and Hastings left them in the hands of Sadrul Haq Khan with strict injunctions for their immediate execution. If required, the Daroga was directed to apply to Middleton for assistance.¹⁰

By this time Hastings had come to form certain opinions about the different facets of the Mahomedan Criminal Law in its practical application and the possible improvements thereof. The imperfections of the Quranic Law were too notorious to elude his attention. He found that the Maulavis of the Mufassal Adalats refused to pass the death sentence on dacoits unless the robbery was attended with murder. Their decisions had the sanction of "the express law" of the Quran, their infallible guide. The Nizamat Adalat, which was equally bound to follow

the Mahomedan Law, confirmed the judgments of the Mufassal Adalats.

Viewed as a whole, the Mahomedan Criminal Law is founded on certain "lenient principles and an abhorrence of bloodshed." There were indeed occasions, when the enormity of the guilt called for capital sentences at least by way of an example and terror to others. But the law in its ordinary course lacked such provision. To this imperfection the Muslim Law itself has provided one effectual remedy by allowing the sovereign power to interpose in extraordinary cases and punish the guilty in a strict and exemplary way even by departing from the strict letter of the law. The history of Muslim justice is full of sanguinary punishments being inflicted by the Muslim sovereigns "without regard to the law and generally without any regular process or form of trial."

In a letter to the Council Hastings discussed the foregoing points in order to convince them that it was conformable to custom for the sovereign power to depart in very special cases from the strict letter of the Mahomedan Criminal Law. He advised his government to adopt this practice of the Muslim rulers and made the following recommendations : the punishments decreed by his government against the professional and notorious robbers should be literally enforced and when these differed from the sentences of the Adalat, they should supersede the latter by "an immediate act of Government." Every convicted felon and murderer not condemned to death by the Adalat and every criminal who had been already sentenced to work for life upon the roads or to suffer perpetual imprisonment should be sold as slaves or transported as such to the Company's establishment at Fort Marlborough. His suggestion was to enforce this regulation by the immediate orders of the Council or by an office commissioned for that purpose by the Nazim himself. The Government would be relieved thereby of the heavy expense of maintaining the "accumulating crowds" of prisoners and the sale of convicts would raise a considerable fund, while the community would suffer no loss by the absence of such troublesome members.

Thereafter, Hastings submitted seven queries to the Council for determination of several significant points upon which the administration of criminal justice in Bengal proved either inadequate to the ends of justice or repugnant to its principles. To each query was annexed Hastings' personal opinion.¹¹

The issue which was first taken up in this series was whether the decree of the Nizamat Adalat should be carried into execution on confirmation by the Nazim or whether the English Government should interfere for enhancing or commuting the punishment in cases appearing "inadequate to the crime or ineffectual as an example."

On this point Hastings had already expressed himself clearly. Although the Company professed to leave the Nazim the supreme judge in all criminal cases and the officers of his courts were allowed to follow their own laws, forms and opinions, independent of the control of the Company, an invariable application of this rule might sometimes be fraught with dangerous consequences affecting both the government and the people. In such cases it was to the sovereign power that the people would look up for redress of their grievances. But the powers of the Nizamat could not obviously serve this purpose, the more so on account of "the reduced state of the Nazim" and "the little interest" he had in the general welfare of the country. The Company, however, could not remain indifferent to the welfare of this country. As Diwan and "the Governing Power" it had "equally a right and obligation to maintain it." Hastings therefore stressed the necessity of superseding the authority of the Nazim in order to correct the irregularities of criminal courts. He, however, did not forget to caution the Council about the undue exercise of this power. This "license" was to be used only after solemn deliberation and never without an absolute necessity. It might well be that in many cases the Nawab's warrant and a sanction of his authority could be procured. None the less Hastings apprehended some occasions for ill consequences as a result whether of his assent or of his dissent, and his considered opinion was in favour of 'superaddition' to the Nazim's sentence by the authority of the English Government.

Laudable as his intention was, Hastings was at the same time conscious of the limitations and risks of his proposals. He knew that the Company had already done too much, and it would be dangerous at present to move even a step beyond the plan of the previous year.

The second point of his discussion was the sharp distinction which was made by the Mahomedan Law between the murder perpetrated with an instrument formed for shedding blood and a deliberate homicide not caused by a blood-drawing instrument.¹² For the latter case Abu Hanifa, "the great oracle of jurisprudence" had declared that such a manslaughter was not a capital crime, for it did not evince an intention to kill. Abu Hanifa's opinions were generally followed by the judges of Bengal and the practice in cases of manslaughter was to commute the death sentence for a pecuniary composition known as *Diyat* or price of blood. The price of blood seemed to have been invariably fixed at the sum of Rs. 3,333-5-4. This precise sum was levied upon each offender without any distinction. Thus, a fine which an opulent man would not feel at all, fell severely on an indigent person. It often happened that the latter was not in dread of this penalty, for he knew that this sum could never be exacted from him. In fact, this practice defeated its own end.

Hastings held that where the intention of murder was clearly proved, no distinction should be made with respect to the weapon employed. He was justified in his opinion by a good many authorities even among the Muslims. The great disciples of Abu Hanifa—Abu Yusuf and Imam Muhammad, had laid down the rational doctrine that it is the intention and not the weapon that constitutes the crime.

Next, Hastings dealt with the 35th article of the Judicial Regulations of 1772. Severe and unjust as it might appear, he was convinced that nothing less than the terror of such a punishment would be sufficient to suppress the evil which had the force of hereditary practice under the avowed protection of the zamindars and the highest officers of the country.

One serious point of contention connected with this article was whether the execution of this Regulation should be subject

to the approval of the Nizamat Adalat or the Nazim. Hastings recommended that every case to which this ordinance was applicable should be placed before the Council for their sanction.¹³

The next two points of objection centred round the privilege granted by the Mahomedan Law to the children or the nearest kinsmen of the murdered person to pardon the murderer and "to execute the sentence passed on the murderers."¹⁴ His query was whether this practice should be allowed to continue or in what manner the English Government should proceed in cases of this kind.

Though enacted by the highest authorities of the Mahomedan faith, these provisions gave rise to serious anomalies by allowing the right of pardon and vengeance to an individual. If a murderer could find means to satisfy the next of kin of the murdered, and obtain from him a Razinama¹⁵ no prosecution could be brought against him. This privilege of pardon was regarded by Hastings as barbarous and "contrary to the first principle of civil society." As for the second privilege—the right of retaliation, it seemed to him "more barbarous than the former and in its consequences more impotent." To prove its absurdity, Hastings cited the case of a mother who was condemned to perish at the hands of her own children for the murder of her husband. Her children were very young. They pardoned their mother and that was only too natural. Thus this misplaced power of life and death enabled many criminals to escape with impunity. Hastings strongly recommended its total abolition, by "an edict of the Nazim" if he could be persuaded to do so, and in case of his refusal, by the authority of the English Government.

Last of all, Hastings considered some of the aspects of the fines imposed for manslaughter. He held that any pecuniary composition should be proportioned not only to the nature of the crime, but also to its degree and the means of the criminal. The fine was a profitable source of income. It appeared undesirable to him to admit the Nazim's right to appropriate it. He suggested that it would be best utilised, if it was set apart

for the restitution of the losses sustained by the people from the dacoities.

Hastings fully knew that any innovation in the established laws or forms of justice was open to various objections. The foregoing objections were not in reality so much in regard to "the Laws in being, as the wants (*sic*) of them, a law which defeats its own Ends and Operation being scarce better than none."

On 31 August 1773 the Council considered and concurred with the aforesaid opinions of the Governor. They admitted the propriety and justness of the power which every Muslim Sovereign (Hakim)¹⁶ had reserved to himself for interposing in cases where the letter of the law appeared clearly repugnant to the principles of good government. But they were not unaware of the delicate nature of their President's recommendations and the difficulties they involved. That is why before coming to any final resolution they wanted the fullest information from Hastings and did not take any action during his absence.

Before his departure from Murshidabad in July Hastings, as we have noted before, had delivered the Nawab's warrants on the fatwas of the Nizamat Adalat to Sadrul Haq Khan with instructions for their immediate execution as also for consulting Middleton, if required. As yet no further information about them had been received by the Council. They wrote to Middleton on 31 August, enquiring how far those warrants had been executed and requesting him to return the warrants which did not belong to the jurisdiction of Murshidabad. Circular letters were at the same time written to the collectors of different districts to submit as early as possible reports of the numbers of prisoners, classified under different heads.¹⁷

Meanwhile, the staff of the Murshidabad Faujdari Adalat had been considerably increased by Middleton. While approving of the additional appointments the Council enquired into the utility of employing so large a number as 200 peons. In reply, Middleton explained that inspite of the establishment of thanas and chaukis (police stations) for the preservation

of order in the city, the services of these peons were often required. In case of violent disturbances, the guilty must be apprehended without delay. Again on many occasions, witnesses were found unwilling to take the trouble of coming from any distance to give the necessary evidence, unless they were compelled to do so by the authority of the court of justice. Middleton's arguments convinced the Council and the whole establishment was sanctioned.¹⁸

In reply to the Council's enquiry about the execution of the Nawab's warrants, Middleton reported on 8 September that only two slips of papers had been handed over to him by Sadrul Haq Khan. One slip contained a list of six persons, Kudma, Myna, Shaker Ali, Muzaffar Ali, Munsa and Dunna who were ordered to be impaled. The other contained the names of three persons, two of whom, Futtoo and Deeboo were sentenced to impalement while the third Apoocha was pardoned. Apoocha was the son of Pran, a dacoit. The Hukumnama directed that the children of dacoits were to be made slaves to the government.

Of the eight persons condemned to impalement, Kudma, Futtoo and Debboo hailed from Chandpur, while the five others were inhabitants of Narayanpur. In compliance with the Nazim's orders they were all executed at the respective places of their residence and Apoocha was released.¹⁹

But regarding the other culprits whose Surat-i-hals (reports) had been transmitted to the Sadr Adalat, not a single bit of information was received as yet by Middleton, nor did he receive any paper relating to those condemned in the different districts. So the Council requested the President to call upon the officers of the Sadr Adalat for the fatwas that had been passed by them and submitted to the Nazim since its first establishment.

The delayed execution of criminal justice focussed the attention of the Governor and Council to a fundamental drawback of the recent arrangements in penal administration. In their eagerness to secure the blessings of justice within the old framework, they had transferred the Nizamat Adalat to Calcutta

and taken upon themselves the business of superintending its proceedings. But the Nazim being the supreme judge in all criminal cases, all the sentences of the Sadr Nizamat Adalat had to be sent to Murshidabad for his final orders. Due to youth and inexperience, the Nawab was exposed to an improper influence of his servants whose negligence or artifices often led to a misuse of his authority and delay of justice. The procedure of transmitting sentences to the Nazim involved such excessive delay that the prisons were filled with criminals and the suspension of justice encouraged crimes. At the same time this process made it impossible to trace the source of obstacles to prompt dispensation of justice and remove them by repeated applications to the Nawab and Munni Begum.²⁰

To counteract these evils, Hastings hit upon a plan. On his return journey from Patna to Calcutta he stopped at Murshidabad and approached the Begum for her consent to the appointment of a deputy of the Nawab, who should reside in Calcutta to sign and affix the seal and expedite the warrants on behalf of the Nazim. The Begum approved of this proposal. At the Governor's recommendation she nominated the then Daroga, Sadrul Haq Khan for that charge and sent to the Governor the necessary Sanad as also the great seal of the Nizamat. The Council also approved on 23 November 1773 the appointment of Sadrul Haq Khan and allowed him an additional salary of Rs. 500 per month "to give due credit and dignity" to this office. The seal of the Nizamat was delivered to Sadrul Haq Khan. Since then the responsibility of controlling the new Naib in the performance of his duties devolved on Hastings and Sadrul Haq Khan continued to revise the sentences of Adalats, pass the warrants and affix the seal thereto under Hastings' immediate care.²¹

A further step was taken on 4 January 1774, when the Council resolved that the proceedings from the Faujdari Adalats should be sent through the Governor to the Nizamat Adalat. This resolution was notified in a circular letter to the Provincial Councils of Revenue at Murshidabad, Patna and Dacca, the Committee of Revenue at Calcutta and to the collectors of

Burdwan, Midnapur, Birbhum, Dinajpur, Rangpur and Purnea. The sentences of the Nizamat Adalat were returned by the Governor himself to the collectors of the different districts, who in their turn delivered them to the officers of the local Faujdari Adalats for immediate execution.²²

Under a temporary plan primarily adopted for the management of revenue, the officers of Faujdari Adalats were forbidden in 1773 to hold farms or other offices. They were obliged to reside in their districts on pain of forfeiture of their employments. Complaints against the officers of Faujdari Adalats were made to the Governor who again referred them to the Sadr Nizamat Adalat for proper enquiry and action.²³

In this way, the Governor continued to supervise personally the administration of criminal justice. From time to time he made a few changes in the existing arrangements of Faujdari courts. Faujdari Adalat of Mahmudshahi was withdrawn and amalgamated with the local Diwani Adalat.²⁴ Moreover, Hastings made attempts to afford easy access to justice for all by an equal distribution of courts among the districts. The extensive zamindari of Rajshahi had so long belonged to the jurisdiction of the Faujdari Adalat of Murshidabad, which proved insufficient for the purpose. A new criminal court was, therefore, established at Bhaturia. In another district Bhusna, lawlessness was rampant and the inhabitants suffered from unrestrained violence. At first Hastings wanted to bring Bhusna within the jurisdiction of the Faujdari Adalat of Jessore. But at Mdiddleton's suggestion he set up a new court at Bhusna.²⁵

Apart from these sporadic changes in the administrative arrangements, his personal supervision of the criminal administration did not remarkably improve the situation, though it had originally raised high hopes among members of the Council. Hastings himself was no less confident than the other members and had once declared that the arrangement of 23 November 1773 would not only prevent delays and abuses but give the Council "an entire controul" over this department and also enable them to correct the imperfections of the Mahomedan

Law by the warrants of the Nazim which would now pass under their "immediate inspection."²⁶

Obviously these hopes were not to be fulfilled. The judges of the Nizamat Adalat did not appear to have ever revised their decrees in the light of either the 35th clause of Judicial Regulations of 1772 or his recommendations of July 1773. In fact no material improvement can be traced in their sentences passed throughout this period. In February 1774 Lewis, collector of Midnapur received a letter from Hastings containing two sentences of the Nizamat Adalat. One of the two prisoners was Dusal Das who was guilty of rape and sentenced to "Durrah 100".²⁷ The other, Lowa committed murder which was adjudged "manslaughter" and the decree was Diyat.²⁸

The Chittagong Records tell of more glaring discrepancies. In November 1773, the English Government sent to Reed, collector of Chittagong, a number of penal warrants from the Nawab which were to be delivered to the local Faujdari Adalat for immediate action. The punishments awarded were as follows :—(a) 50 strokes of the kora to eight men for house-breaking and to one man for theft and attempt at murder ; (b) fine for one man for manslaughter ; (c) three years' imprisonment for eight men for dacoity ; (d) death for eight men for dacoity with murder and lastly, (e) right hands and left feet of two men to be cut off for dacoity.²⁹

It appears that Reed stopped the execution of the last two sentences on his own responsibility. He was succeeded by Goodwin who referred this matter to the Government in April 1774, and received a reply, dated 11 July, signed by Hastings alone. The Governor wrote that the officers of Nizamat Adalat had again affirmed the propriety of the sentence and that it was strictly conformable to Mahomedan Law. "As the natives", he added, "are not to be tried by our notions of justice, but by the established law of the Country (excepting in very extraordinary cases where it has been usual for Government to interfere) I must request that you will permit the officers appointed for the purpose to carry the warrants into immediate execution." Also, the list submitted by Goodwin to the Government on

4 August 1774, contained such sentences as "25 to 30 stripes every seven days for six months for theft", and "the roads for life" for dacoity and burning to death the son of the robbed man. On another occasion, Goodwin could not help protesting mildly against the orders he had received respecting one Sugni Dye. This order was "to bare her to her own reflections."³⁰

In course of his superintendence of the criminal administration of Bengal, Hastings came to realise that the institution of the Faujdari Adalats did not produce the expected benefits. He continued to receive complaints from all parts of the province about the excesses committed by dacoits, although intimations never came from the zamindars, farmers or other officers of revenue. He also gathered that the zamindars themselves sometimes afforded protection to dacoits and the ryots dared not complain for fear of death at the hands of dacoits. Many villages specially those in Jessore and Mahmudshahi paid a regular mal-guzari (land-revenue) to the chiefs of dacoits.

In his minute of 19 April 1774 Hastings assigned several causes for the increase of notorious disorders in this country.³¹ The abolition of the establishment of Faujdars and thanadars, who were the zonal instruments for the preservation of public peace had increased the confidence of dacoits. It had not been substituted by any alternative means for giving timely information about the disorders.

Another factor that contributed to the spread of lawlessness was the resumption of chakaran zamin or lands allotted to thanadars and paiks for their services against robbers. Many of the people thus deprived of their livelihood resorted to dacoity themselves. The greater number of the people who were employed by the farmers for collections had their wages withheld from them. This fact negatived their utility to the community and accounted for the silence of the farmers about the disturbances in their districts.

Thirdly, by replacing many of the zamindars by farmers, the farming system became one of the principal sources of the disorderly state of the mofussil. It negatived the age-old claim possessed by the public on the zamindars for the restitution

of all damages caused by robbers. The zamindars having no longer the same authority could not be held answerable as before for such a claim, although the 'right' of the Government in this respect had not yet been formally renounced.

The cause dwelt upon by Hastings, last of all, was the legal precision practised by the new courts of justice in their application of the Mahomedan Law. This law required the positive testimony of two eye-witnesses for the conviction of capital offenders. But it was often found difficult to satisfy this condition. The robbers generally acted under the cover of night or in disguise. Apart from this, the chiefs of dacoits behaved in such a way as if they were invested with a legal and public authority for the powers they exercised. The common people held them in great dread and were unwilling to state the real facts against them. The lack of evidence, therefore, secured the acquittal of many notorious dacoits. From his recollection of recent trials, Hastings could assert that whenever their guilt had been proved, it was not by evidence, but by their own confessions.³²

By way of a practical solution of this difficulty the practice adopted by the "former Government" was to ascertain the identity of the notorious criminals and condemn them without waiting for any further process to establish a specific charge against them. But this was a practice undoubtedly repugnant to the British notion of equity. None the less Hastings recommended this summary process and argued, "A rigid observance of the Letter of the Law is a blessing in a well regulated state, but in a Government loose as that of Bengal is, and must be for some years to come, an extraordinary and exemplary coercion must be applied to eradicate those evils which the law cannot reach."

He also proposed some other remedial measures which were approved by the Council. The revival of the system of Faujdars formed the cardinal point of these proposals. Faujdars were to be appointed at the different stations for the protection of the people, detection and apprehension of robbers within their respective districts and supply of constant intelligence to the Presidency on all matters of public peace.³³

The zamindars, farmers and other officers of the collections were enjoined to afford Faujdars all possible assistance in the discharge of their duties and also to make over their land servants to the "absolute command" of the Faujdars. It was also resolved to separate the chakaran lands from the rent roll and apply these to the maintenance of thanadars and paiks. An office was to be instituted under the Governor-General's control for receiving and registering all reports from the Faujdars and issuing orders to them.

The following places were proposed for the Faujdari stations:³⁴

- | | |
|--------------------|------------------------|
| 1. Calcutta. | 8. Sherpur in Bhaturia |
| 2. Thana Muckwa | 9. Attia |
| 3. Hugli | 10. Rajnagar |
| 4. Katwa | 11. Bakarganj |
| 5. Jillee Shorepur | 12. Mirzanagar |
| 6. Murshidabad | 13. Itchacada |
| 7. Godagari | 14. Birbhum |

The scheme did not however cover Bihar, North Bengal and eastern parganas of Dacca, since the information at the Governor's disposal was not deemed sufficient for deciding upon either the requirements of Bihar or locations of stations in North Bengal and Eastern Dacca.

Financial stringency was the bed-rock upon which the scheme was likely to founder. Anticipating the possible financial objections to his plan, Hastings asserted with confidence that its cost would not equal the loss sustained by cultivation and revenue due to the continuance of the state of lawlessness. It was not contemplated by Hastings to establish the Faujdari thanas all at once. Only three stations of Katwa, Mirzanagar and Itchacada (Bhusna) were chosen for immediate trial, because the areas adjacent to them were more infested with robbers than the rest of the province.

Mehedi Ali Khan, Golam Ali Khan and Mirza Muhammad Ali Khan were appointed Faujdars of Katwa, Mirzanagar and Itchacada respectively. They were placed under the control of Hastings. Parwanas were sent to them detailing their

functions about the due maintenance of peace within their areas.³⁵ Each Faujdar was to write to the farmers and zamindars within his jurisdiction requiring them to place at his disposal the services of thanadars, chaukidars, "seranadars" and paiks maintained by them with pay or land for the policing of the country. It was his option to post them himself or to give them back to the zamindars and farmers for employment according to his directions. The services of these men were to be retained or terminated at the discretion of the Faujdar. In case any of them was negligent of duty, the Faujdar could punish him with stripes or imprisonment.

To strengthen the implementation of this measure, instructions were given to the Provincial Councils of Burdwan, Murshidabad and Calcutta to afford all assistance to the newly appointed Faujdars and enforce a careful observance of the Faujdari parwanas. They were asked to obtain 'muchalkas' from the zamindars, farmers and talukdars requiring them to (a) conform to all regulations and orders received from the Faujdar, (b) regularly inform the Faujdar of every crime or disturbance and the appearance of the robbers and Sannyasis and their haunts, (c) make good all losses arising from their neglect of the charge, and lastly to be liable for punishment for any notorious connivance at the crimes. It was the Faujdar who was expected to exercise primary circumspection over the zamindars and farmers and was answerable for the good order and quiet of the districts under his charge and as such he was equally open to punishment for neglect or abuse of the trust.

In view of chronic depredations at Poobtul and its adjacent areas, Muhammed Ali Beg was nominated to be the Naib of Poobtul under the Faujdar of Katwa. The monthly establishment charges of the three Faujdari chaukis were fixed at Rs. 518 each. The sum of Rs. 215 was sanctioned for the Naib Faujdar's establishment at Poobtul.³⁶ As for the establishment set up for receiving and registering all reports from the Faujdars, a monthly amount of Rs. 134 was assigned from the Nizamat Adalat funds.³⁷

In this connection an old Faujdari establishment, which

was in operation at the time the new ones were instituted, deserves notice. This was the Faujdari of Hugli. Unlike other Faujdars recalled in December 1770, the Faujdar of Hugli was allowed to continue in office in order to "have the appearance of the country Government preserved" before the eyes of the French, Dutch and Danish nations in Bengal.³⁸

The nature of his business was somewhat different from that in the other districts. He was not merely a police officer and judge, but also the collector of customs. By keeping him in the forefront as an ostensible officer of the Nazim, the Company used him as its agent in conducting its trade relations with other foreign nations in Bengal. He thus came to be a servant of the Nazim as well as of the Company.³⁹ He was appointed and dismissed by the Council who fixed his salary too but a corroborative parwana for his recall or investiture was required to be issued by the Nazim in order to silence the clamour of the foreign nations.⁴⁰ In February 1773 Mahmud Ali, Faujdar of Hugli, was removed from service because he was a very near relative of Reza Khan, the dismissed Naib Nazim.⁴¹ Khan Jahan Khan succeeded him on a monthly salary of Rs. 6,000.⁴²

In his judicial capacity, the Faujdar of Hugli continued to supervise the proceedings of the local Faujdari Adalat. Formerly, he used to decide both civil and criminal causes. The Judicial Regulations of 1772 excluded him from any share in the decision of civil suits which were henceforth tried in the Diwani Adalat under the presidency of the district collector. When the Faujdar of Hugli claimed his right to sit with the collector in the administration of justice, the Council ordered that all complaints, civil or criminal, respecting the foreign nations and inhabitants of their settlements were to be cognizable by the Faujdar, assisted by the officers of the Adalats.⁴³

A hundred barkandazes (armed guards) were always stationed at Hugli to guard the fort, preserve the peace of the town and execute the orders of the Faujdar regarding the foreign nations. The boats and ships of the French and Dutch Companies, which were subject to the Customs were not allowed to be released

without the Faujdar's permission.⁴⁴ All correspondence with the foreign nations and all notifications to them passed through him.⁴⁵ In May 1775, inspite of the Governor-General's dissent, the Council dismissed Khan Jahan Khan and recommended Mirza Emendi to be the Faujdar of Hugli. The Faujdar's salary was reduced from Rs. 6,000 to Rs. 3,000 per month. On his request for two companies of sepoys only one company was sanctioned.⁴⁶

Three petitions from certain inhabitants of Chandradwip and parganas of Buzurgumedpur and Selimabad in the district of Mirzanagar were discussed by the Council on 7 April 1775. These showed how the local robbers and murderers committed the most enormous outrages even in broad day-light, and how in consequence the common people were afraid to live in their houses. Before the Faujdar of Mirzanagar could possibly send them any assistance, the robbers fled to the jungles of the Sundarbans only to reappear the moment the Faujdar's people were gone. The police station of Mirzanagar was at such a distance that the people could not expect any effective assistance from that quarter. In consequence, the Council appointed Abbas Ali as Naib Faujdar for the district of Buzurgumedpur with the same establishment as that of Poobtul. The Provincial Council of Revenue at Dacca were instructed to render him every assistance in the discharge of his duties.⁴⁷

Thus, even by the middle of 1775 only four Faujdars and two Naib Faujdars were functioning.⁴⁸ Although evils were "gaining ground both in the number of dacoits and the daringness of their attempts"⁴⁹, no further effort was made to implement the scheme of 19 April 1774.⁵⁰

Hastings was personally in favour of the extension of the Faujdari system over the whole province, for he believed it to be absolutely necessary for the peace of the country. Urgent calls of other business, however, prevented him from giving due attention to it. On that ground he asked the Council on 29 May 1775, to relieve him of the control of Faujdari establishments. On 14 April Hastings had already expressed his desire to relinquish the superintendence of the criminal judicature of

the provinces, for he found this duty "too heavy" and "the responsibility attached to it too dangerous" for him to have any further concern. Again, on 25 August 1775, he urged the Council to take a quick decision on the above matter and also to inform the Deputy of the Nawab (Sadrul Haq Khan) that henceforth he would be free to discharge his duties without any control or intervention of the English Government.⁵¹

The zeal with which Hastings had entered upon his work of supervision of the penal administration had ebbed away. The "sacred" charge had lost its sanctity and its burden had grown in weight and become a "disagreeable duty". Evidently, he could not materially improve the standard of justice in Bengal. But there was some exaggeration in the criticism of the hostile majority of the Council that the administration of criminal justice throughout the country was "at a stand."⁵² On the other hand, it was by pointing to the persistent opposition of the triumvirate that Hastings explained his failure and his eagerness to be relieved of his unpleasant duty.

In fact, these personal attacks and counter-attacks in the Council do not tell the whole tale. In order to assess Hastings' role in the history of penal administration of this period, we shall have to look into the deeper cross-currents that baffled the vigour of his plans.

On his arrival as Governor, Hastings had found the courts of justice in a state of disorder due to the laxity and decay of the Muslim Government. He deemed it necessary to take them under his "protection." He had however a firm faith in the efficacy of the indigenous institutions of justice. He always wanted to mould his reforms in conformity with the constitutional forms of Bengal and the temper and tradition of her people. The object of the reforms of 1772 was therefore not to invent novel expedients, but to revive the ancient courts of justice, besides the complete separation of the civil and criminal judicature. On the same principle an attempt was made to restore the indigenous institution of Faujdars.

As for the Mahomedan Law, which was the "infallible guide" of the criminal courts, he did not find it "repugnant to the genius

and temper of the people."⁵³ Here also his clear theory was that the penal code of a people must be consistent with their ideas, manners and inclinations and it was "wanton tyranny" to require their obedience to alien laws.⁵⁴ So with only one exception, his reforms never deviated from the principles of the Mahomedan Law. Early in January 1773, some competent persons were appointed to compile a well-digested code of laws and tenets of the Muslims and the Hindus.⁵⁵

But many of the provisions of the Mahomedan Law clashed with his British conception of the rule of law. He was pained to find that the most atrocious criminals escaped with impunity by means of a precaution in the manner of perpetrating the crime, by the privilege enjoyed by the individuals of remitting the punishment and also by many nice distinctions the expounders of the Quran had introduced. He made some attempts to provide a remedy for these imperfections. Here again he scrupulously confined himself to a maxim interwoven with the constitution of a Mahomedan State. He pleaded that the sovereign power in every Mahomedan State had reserved to itself the right of interposing in every case of importance where the precise letter of the law could not reach the root of the evil. But this suggestion was never put into action. Similarly, the 35th Regulation affecting the dacoits was honoured chiefly in the breach. In fact, the Nazim as also the Mahomedan judges could never be persuaded to deviate from the traditional line of their conduct.

The basic difficulty, however, arose not merely from the inequities of the Mahomedan Law but also from the political limitations of Hastings' power. Criminal justice and police belonged to the Nawab's jurisdiction and Hastings was not invested with any direct authority over the magistracy. Although the old framework had outlived its potentiality, any sort of interposition was fraught with risks. It was also the policy of the Directors to avoid as much as possible any appearance of their interposition. Hastings was therefore compelled to entrust the execution of his reforms to the Mahomedan officers who were allowed to proceed according to their own

laws, forms and opinions, independent of the control of his Government. He supervised the proceedings of the Sadr Nizamat Adalat and could only urge the officers to do their duties properly. He marked the inconsistencies of their decisions but could do no more than offering some recommendations and sending them to the Nawab whom he could only persuade and not dictate to accept his views. All his attention was therefore attended with "little visible effect." Justice was necessarily delayed by the practice of all decrees of the Nizamat Adalat being forwarded to Murshidabad for authentication by the Nazim. This helped criminals and the number of crimes swelled. Hastings' personal opinion was that as the "governing power," the English Government had a right and obligation to look to the welfare of the country and they might with justice exercise the power of interposition in view of the youth, inexperience and the reduced condition of the Nazim. But his personal opinions did not outgrow the range of practical politics. He knew that it would be dangerous to move a step beyond the plan of 1772.

He, however, worked out a plan to ensure prompt execution of justice. The Nawab was persuaded to delegate his supreme right of confirmation to Sadrul Haq Khan who continued to sign and expedite the warrants under the direct superintendence of Hastings in Calcutta. This arrangement enabled Hastings to exercise much greater influence on the penal administration than before. But it was not to last long. It was at this time that the Regulating Act introduced endless complications into his Government. With the inauguration of the new system on 26 October 1774, his days were rendered most unenviable. He was constantly borne down by the trio in the Council who opposed every measure of their Governor-General. Their dissensions became a public scandal and the Government was considerably weakened. In view of these circumstances, Hastings' desire for relief from the superintendence of the Faujdarji jurisdiction does not at all seem strange.⁵⁸

Although the Directors had ordered their servants to find out a suitable minister as a substitute for Reza Khan, the office

of Naib Nazim was abolished in 1772 and only a part of its authority delegated to Munni Begum and Raja Gurudas.⁵⁷ The gentlemen in the majority now discovered that by disregarding the positive orders of their masters the late Governor and Council had reduced the country government "to such a weakness as not even to carry the appearance of Government, either to its own subjects or to foreigners."⁵⁸ They therefore hastened to make up that initial mistake. The candidate also was ready at hand. The Governor and Council had absolved Reza Khan from all charges and suspicion. His acquittal had induced the Court of Directors to recommend him for re-employment.⁵⁹ On 18 October 1775 the Council recommended him to the Nawab to be the Naib Nazim again with full authority to transact the political affairs of the Sarkar and also to superintend the criminal administration. Hastings was averse to the idea of entrusting Reza Khan with uncontrolled powers over the magistracy and the courts of criminal justice and opposed the measure. But he was outvoted.⁶⁰ By reviving the Naib Nazim's office, handing it over to Reza Khan and removing the Sadr Nizamat Adalat to Murshidabad, the Council majority sought to "recover the country government from the state of feebleness and insignificance to which it was Mr. Hastings' avowed policy to reduce it."

With great hope they wrote to their masters, "the measure seems to us indispensably necessary and promises success."⁶¹

References

1. The antecedents of Sadru Haq Khan were as below :—

Born in Gujrat, Sadru Haq Khan on some emergency went to Shahjahanabad with his father where the old man died. Finding no prospects there, he came to Murshidabad and took service under Alivardi Khan. After the death of Qazi Muzaffar Ali, he became Daroga of the Murshidabad Adalat. At the time of the Maratha incursions he was sent as ambassador to their rulers in the Deccan, where he acquired the esteem and good will of both sides. Thereafter he became a man of distinction and came to have a regiment of his own. When Reza Khan came to power on Mir Jafar's death, Sadru Haq Khan was appointed Governor of Bhagalpur, but was soon after dismissed. On Hastings' arrival in Bengal as Governor, Sadru

Haq Khan came to win his favour and was rewarded for his steadfast attachment to him by being offered the office of the Daroga of the Sadr Nizamat Adalat. (*Seir*, Vol III, p. 102).

2. Rev. Cons., 24 Nov., 15 Dec., 1772; C.P.C., Vol. IV, Nos. 101, 111-112.

The actual establishment of the Sadr Diwani Adalat consisted of the President and Council of Revenue at Fort William, Rai Rayan, two Head Qanungos with their deputies and other officers of the Khalsa kachahri, two Pandits or Brahmins, one Peshkar, one Persian Muharrir, two Bengali Muhammirs, Nazir of the Khalsa and his peons. It was opened on 18 March 1773. *Vide* Rev. Cons., 9 March 1773 ; Revenue Letter to Court, 25 March 1773.

3. Rev. Cons., 5 Jan. 1773, Revenue Letter to Court, 6 Jan. 1773 ; C.P.C., Vol. IV, Nos 126, 139, 149. Two of the Sanads—those of the Chief Justice and Chief Qazi were not found in order, so they were sent back to the Nawab who rewrote them according to the drafts supplied by the Governor.

4. Rev. Cons., 3 Aug. 1773.

Formerly the Faujdari and Diwani courts took cognizance of the same cause. One purpose of the judicial regulations of 1772 was to clearly distinguish their separate jurisdictions. But the old habits die hard. Sadr Diwani Adalat raised on 9 June 1773 a point of jurisdiction over a petition filed before it by "Mzudaram (sic) Bysack" and others who appealed against the decree passed by a Faujdari Adalat. The suit related to the execution of the last will of the mother of Shyam Charan Seth and was not properly cognizable by the Faujdari Adalat. Officers of the Faujdari Adalat were ordered to confine themselves to the line laid down for them by the late judicial regulations. The case in question having been illegally tried in the Faujdari Adalat, appeal was not allowed and it was sent to the district Diwani Adalat to be tried *de novo*. (Rev. Cons., 11 June 1773).

5. Rev. Cons., 3 Aug. 1773 ; C.P.C., Vol IV, No 320. Hastings' letter to the Council is undated in the manuscript proceedings in the custody of the West Bengal Government (Rev. Cons., 3 Aug. 1773). According to Colebrooke and Harington, this was written on 10 July 1773. (Harington, *op. cit.*, p 301 and Colebrooke, *Supplement to the Digest of the Regulations and Laws etc.* pp 114-119.) Hastings subjoined to this letter copies of the said abstract and the letter which he had written to Middleton on 24 May 1773.

See Appendix A for the abstract of these trials.

6. The punishments decreed for these thirteen were considered just by Hastings, while about the eight persons of the latter group, he remarked, "The families of the Criminals ought to be enquired after and deprived of their liberty agreeable to the 35th Article of the Judicial Regulations." These eight persons were impaled agreeably to the Nazim's

warrants. See enclosure to the letter from the Resident at the Durbar of 8 Sept. 1773, in Rev. Cons., 14 Sept. 1773.

This enclosure also contains a list of persons whose Surat-i-hals (reports) had been transmitted to Calcutta from the Murshidabad Faujdari Adalat since December 1772 until August 1773.

7. Hastings recommended perpetual imprisonment for these two dacoits.

8. It was only in one case that the amount of Diyat was specified and that sum was Rs. 3,333-5-4.

9. For further specimen of fatwas of the Nizamat Adalat on the trials referred to the Nazim on 20 June 1773, see Rev. Cons., 28 Sept. 1773, I.O. Progs. (1772-74), Range 67, Vol. 57, pp. 165-66.

The crimes and punishments recorded therein may be classed as follows :—

Crimes	Punishments
(i) Dacoity or theft above 10 Dirhams*	hand to be cut off,
(ii) Dacoity	hand and foot to be cut off,
(iii) Murder and dacoity	death,
(iv) Murder	death, "if any friends of the deceased claim in his blood".
(v) Ditto (intention not proved)	Diyat,
(vi) Seduction	
(vii) Theft	
(viii) Adultery	
(ix) Association with dacoity	
(x) Murder	
(xi) Biting a man	
	"to be punished".

To quote examples, one Tilokram who unintentionally killed a child was pardoned by the parent and released. On the other hand, Indu Narayan, Dinamani and others charged with dacoity, were found "not guilty but suspected", yet their hands were to be cut off. It is also worthy of note that the undefined punishment recorded against Nos. (vi-xi) was indiscriminately awarded for various kinds of offences.

*Dirham—"A silver coin, usually weighing from 45 to 50 grains" (Wilson's *Glossary*, p. 143)

10. Rev. Cons., 3 Aug. 1773.

11. *Ibid.*

The queries were as follows :—

(i) "Whether the Fettwa or decree of the Nizamat Adawlut after it shall have received the confirmation of the Nazim, shall be carried into execution precisely on the terms of his warrant, or whether the Government shall interfere in adding to, or commuting the punishment in cases wherein it shall appear inadequate to the crime or ineffectual as an Example."

(ii) "Whether the distinction which is made by the Mahomedan Law between murder perpetrated with an instrument formed for shedding blood and death caused by a deliberate act, but not by the means of an instrument

formed for shedding blood, shall be admitted and whether the fine imposed on the latter shall be allowed as a sufficient punishment?"

(iii) "Whether the punishment decreed by the 35th Article of the Judicial Regulations formed by the Board shall be carried into execution without the sentences of the Court of Adawlut, or the warrant of the Nazim, and in what manner?"

(iv) "Whether the privilege granted by the Mahomedan Law to the sons or nearest of kin, to pardon the murderers of their parents or kinsman, shall be allowed to continue in practice, or in what manner the Government shall proceed in cases of this kind, if it shall be judged expedient to make an example of the criminals in opposition to the letter of the law, and the sentences of the Court of the Adawlut?"*

(v) "Whether the Law which enjoins the children or nearest of kin to the person deceased, to execute the sentence passed on the murderers of their parents or kinsman, on account of its tendency to cause such crimes to pass with impunity, shall be permitted to continue or whether it shall not be abolished by a formal act of Government?"

(vi) "Whether fines inflicted for manslaughter shall be proportioned to the nature of the crime, as the Mahomedan Law seems to intend, or both to the nature and degree of the crime, and to the substance and means of the criminal?"

(vii) "Whether the fines shall be paid to the Nazim or taken by the Company as Dewans, or whether they shall not be set apart for the maintenance of the Courts and officers of Justice, and for the restitution of the losses sustained by the inhabitants from dacoits or thieves?"

* In Harington, *op.cit.*, p. 304, the words are "the sentiments of the Nizamat Adawlut."

12. These two kinds of homicide are known by the terms :—Kutl-i-umd (murder) and Shibah-i-umd (manslaughter). Illegal and penal homicide is of five classes :—

- (i) erroneous homicide,
- (ii) involuntary homicide by an involuntary act,
- (iii) accidental homicide by an intervening cause,
- (vi) manslaughter,
- (v) wilful homicide or murder.

See Harington, *op. cit.*, p. 251.

13. Hastings requested the Council to consider the expediency of instituting an office for recording such extraordinary proceedings and executing the Council's orders on them. Early in 1773 at his instance, circulars were sent to the collectors requiring them to announce the 35th Regulation by written advertisements in the public kachahrис and by beat of drum in every village. They were also enjoined to see it enforced. (Rev. Cons., 5 Feb. 1773).

However strongly Hastings might have felt on this matter, it does not appear that the 35th Regulation ever came into force.

14. In fact, however, the next of kin of the deceased did not enjoy such personal right of execution of sentence as is suggested by the wording of Hastings' query No. 5, they could only claim Qisas (blood for blood).

15. A written declaration by which the plaintiff acknowledges that he has been satisfied by the defendant.

See Appendix B for a specimen of Razinama.

16. In the manuscript proceedings of the Council (Rev. Cons., 31 Aug. 1773) the wording is "Hakim, for rules of the country" while Harington puts it as 'Hakim, or ruler of the country.' (Harington, *op. cit.*, Vol I, P. 305). The latter seems to be the correct version.

17. The prisoners were classed at first under each of the following heads :—

(i) murder, (ii) dacoity, (iii) housebreaking and robbery, (iv) fraud or theft, (v) rape or adultery, (vi) assault, slander and other petty crimes and misdemeanours and (vii) debt ; and secondly, into two categories, *viz.* (i) not yet brought to trial and ; (ii) convicted on trial.

18. Rev. Cons., 31 Aug., 21 Sept., 1773.

The list of additional officers and servants appointed for the Faujdari Adalat at Murshidabad :—

1 Brahmin for swearing the evidence.

1 Mullah.

1 Bengali doctor for jail.

1 Korabardar or flogger.

2 Tillandar or executioner.

2 Gourcunds or people for carrying away and burying the dead.

4 Mirdahas or head peons.

200 peons.

19. Rev. Cons., 14 Sept. 1773.

It is very difficult to find out the exact spellings of the above names for they vary every time they are mentioned, even in one and the same list, e.g., Deepoo, Dabboo, Debboo, Deeboo and so on.

20. Rev. Cons., 23 Nov. 1773 ; Revenue Letter to Court, 15 March 1774.

21. *Ibid.*

22. Rev. Cons., 4 Jan., 1 Feb., 16 March, 1774.

23. *Ibid.*, 23 Nov. 1773.

24. *Ibid.*, 4 Jan. 1774.

25. *Ibid.*, 12 July 1774.

26. *Ibid.*, 23 Nov. 1773.

27. *Sic*, Koras 100 (?)

28. Midnapur District Records, Vol. III, p. 210, Nos. 307-8.

29. Chittagong District Records, Vol. 1, Part 1, p. 124-5 No. 178 ;

Cotton, *Memorandum on the Revenue History of Chittagong*, Appendix W., pp. 221-22.

30. Cotton, *op. cit.*, Appendix W., p. 222.

See Rev. Cons., 15 Dec. 1772, I.O. Copies (1772-74), Range 49, Vol. 38, pp. 745-48, for a set of trials at the Murshidabad Faujdari Adalat. One of the prisoners, Ram Jadu was for theft sentenced to labour on the roads for two years. Ram Mitra Chaukidar who was convicted for exacting duties on grain from a merchant was to pay Rs. 75 as compensation and receive 20 stripes, to be carried to the different chaukis of Pachutra and have his offence and punishments declared there and also to be degraded from his office.

31. Rev. Cons., 19 April 1774.

32. For similar observations made by Hastings in order to show how "the scrupulous exactness" of the Faujdari courts encouraged public robbers, see Secret Cons., 7 Dec. 1775.

33. "The Fouzdars," observed Hastings, "were recommended to be appointed for the guard of the country because since their former abolition no other, or at least no effectual means had been provided for securing the peace of the country, because many of the land-servants who were the constitutional guards of the country had been dismissed and because the farmers and Zamindars being no longer answerable for robberies, either neglected or encouraged them." (Secret Cons., 7 Dec. 1775).

34. The boundary of each Faujdar's jurisdiction was also laid down.

35. Rev. Cons., 10 May 1774.

36. *Ibid.*

(a) Faujdar's establishment

(b) Naib Faujdar's establish-

ment at Poobtul

	Rs.		Rs.
Faujdar	250	Naib Faujdar	75
Peshkar	60	Munshi	30
Muharrir	20	Muharrir	20
Munshi	30	Mirdaha	10
Jamadar & deputy	16	10 peons	40
25 peons	100	Muharrir & Qanungo	20
Muharrir & Qanungo	20	Daftar-band	4
Daftar-band	4	Farash	4
Farash	4	Tomtom	3
Tomtom	3	Contingent charges	9
Contingent charges	11		
	<hr/> 518		<hr/> 215

37. Rev. Cons., 2 Aug. 1774.

Establishment of servants for the central Faujdari office :—

	Rs.
1 Munshi	50
1 Daftari	4
8 Harkaras at Rs. 5 each	40
Sarishtadar & muharrir	30
Office & incidental charges	10
	<hr/> 134

38. Secret Cons., 3 Dec. 1770 ; Progs. C.C.R., Murshidabad, 10 Dec. 1770 ; Vol. II, pp. 35-36.

39. C.P.C., Vol V, Nos. 141, 173-74, 181.

40. Until the Nawab's Parwana was received by the foreign Chiefs on the appointment of a Faujdar, they refused to pay revenue to the latter. For such a case of refusal see Rev. Cons., 27 June 1775.

41. Rev. Cons., 16 Feb. 1773.

All dependants and relatives of Reza Khan were removed from their offices in obedience to the Court's letter of 28 Aug. 1771.

42. Rev. Cons., 7 May 1773.

43. Rev. Cons., 3 Aug., 31 Aug., 1 Oct., 1773.

For several instances of foreigners tried by the successive Hugli Faujdars, namely, Muhammad Yar Beg Khan, Amir Beg Khan, Muhamnaad Kasim Khan, Khan Jahan Khan and Mahdi Nisar Khan, see C. P. C., Vol. V, No. 1138.

44. Rev. Cons., 31 Aug. 1773.

45. *Ibid*, 9 July 1776 ; C.P.C., Vol. V, No 1738.

46. Rev. Cons., 31 March, 19 May, 23 May, 30 May, 27 June, 1775.

On 31 March 1775 after Hastings had declared the meeting dissolved and withdrawn along with Barwell, the gentleman in the majority continued the sitting with Clavering in the chair. Mir Zainul Abedin was admitted into the Chamber to substantiate certain charges against Khan Jahan Khan. It was alleged that the latter who had been appointed at the instance of Hastings was under a contract to pay Rs. 36,000 and Rs. 4,000 per annum to Hastings and his banian Kanta respectively. A letter under signature of Khan Jahan Khan was produced by Zainul Abedin to prove the alleged bribery. On 19 May he delivered another letter bearing the Faujdar's seal. When asked as to the genuineness of these letters the Faujdar refused to swear. This was taken by the Council as contempt of the authority of the Government and the Faujdar was dismissed.

47. Rev. Cons., 7 April 1775.

In reply to the charge of the Council majority that the Faujdars had always misused their power to plunder and oppress the people instead of protecting them, Hastings put forward the petition of the ryots of Buzurgumepur to show that the Faujdars contributed very effectively to the

suppression of dacoity. Otherwise those ryots would not have prayed for the establishment of a Faujdari jurisdiction like the one of Mirzanagar.

48. There was, however, a titular Faujdar in the city of Murshidabad. Munni Begum had represented that the absence of a Faujdar in that city tended to lower the prestige of the Nizamat. In deference to her request, Mir Yusuf Ali Khan was in September 1772 appointed as a nominal Faujdar on Rs. 600 a month in addition to Rs. 400, which he was already receiving from the Nizamat.

In the Committee of Circuit's proceedings at Kasimbazar (7 September 1772) one Maulavi Husain appears to have been enjoying Rs. 200 as Faujdar and Rs. 300 as Daroga of the Murshidabad Faujdari Adalat. Mir Mutteecullah was paid Rs. 100 as Naib Faujdar.

The Faujdar of Murshidabad does not appear to have actually exercised any police function. On the contrary, in course of giving instructions to Reza Khan on 9 November 1775, the Council pointed out that the Faujdari chaklas had been established in four places only, viz., Hugli, Katwa, Mirzanagar and Bhusna. The omission of the Murshidabad Faujdari from this list is significant and leaves no room for doubt as to its virtual insignificance. See C. P. C., Vol. IV, Nos. 7, 79 ; Prog., Com. of Circuit, Kasimbazar, 7 Sept. 1772 ; Secret Cons., 9 Nov. 1775.

49. Letter to Court, 18 Oct. 1774. Bengal letters received, Vol. 13, pp. 165-66.

50. The partial execution of his Faujdari scheme was thus explained by Hastings, "An attempt was made to restore the Fouzdar establishments, but not universally, because we were fearful of hazarding their effects at once over the whole face of the country, till some experience had convinced us of their utility." (Secret Cons., 7 Dec. 1775).

51. Rev. Cons., 14 April, 29 May, 1775 ; Misc. Rev. Progs. (1772-76), Vol. I, 25 Aug. 1775.

52. Secret Cons., 7 Dec. 1775 ; Separate Letter to Court from Clavering, Monson and Francis, 21 Nov. 1775.

53. Secret Cons., 7 Dec. 1775.

54. Hastings to Lord Mansfield, 21 March 1774 (Gleig, *op. cit.*, Vol. I, pp. 399-403) ; Hastings to the Court of Directors, 24 March 1774 (Moncton-Jones, *op. cit.*, p. 338).

It must be noted that no less ardently than Hastings Verelst did hold that to impose English laws and customs on the Indians would be not only highly impracticable, but an act of sheer injustice. "As well," he observed, "might we transplant the full grown Oak to the banks of the Ganges as dream that any part of a code matured by the patient labours of the successive judges and legislators in this island can possibly coalesce with the customs of Bengal" (Verelst, *op. cit.*, p. 134).

55. Revenue Letter to Court, 25 March 1773.

56. He himself explained his reasons some time later. He said that

the courts of justice were regularly conducted before the establishment of the new Council. From that date the Diwani courts were neglected and the Sadr Diwani Adalat was "abolished." To the same period he ascribed the beginning of disorders of the Faujdari Adalats. Formerly, he used to spend much time for them, "but", he added, "neither in the superintendence of these Courts nor in the control of the Faujdars could I venture any longer to act, when I saw myself deprived of the confidence and support which had formerly enabled me to execute so delicate a trust and when every occasion was seized by my associates in the Government to weaken my authority and to blacken my conduct." (Secret Cons., 7 Dec. 1775).

57. The gentlemen in the majority were always ready to undo Hastings' measures. It being reported to them by Munni Begum's treasurer Nanda Ray that she had embezzled a sum of over 9 lakhs, they sent Goring to divest the Begum of her office of Nawab's guardian and to examine all papers of the Nizamat accounts, along with Maxwell, Anderson and Grant, members of the Provincial Council of Murshidabad. On 17 May 1775, Munni Begum was removed from her office. *Vide Letters sent to Government, Vol. 3, Nizamat Department Records ; Secret Cons., 25 May 1775.*

58. Secret Cons., 18 Oct. 1775.

Hastings replied that "all the arts of policy" could not conceal the power by which these provinces were ruled, nor could "all the arts of sophistry" transfer the responsibility of them to the Nawab, when it was "as visible as the light of the sun" that the ruling power was the English Government and that the Nawab was "a mere pageant without so much as the shadow of authority." (Secret Cons., 7 Dec. 1775).

59. Secret and Separate Cons., 3 March 1774 ; General Letter from Court, 3 March 1775.

They wanted him to be Rai Rayan, for they did not mean to restore him to "any improper degree of power." Rai Rayan's was, however, a Hindu office which could not be held by a Muslim. Besides, immediately after his release Reza Khan allied himself with the Council majority who, therefore, advanced his cause.

60. Secret Cons., 18 Oct., 7 Dec., 1775.

Raja Raj Ballabh was dismissed from the office of Rai Rayan to make room for Raja Gurudas.

61. Separate Letter to Court from Clavering, Monson and Francis, 21 Nov. 1775.

"According to the Governor-General's plan", they observed, "we should have confined the only man, perhaps, of real abilities and extensive knowledge in the country to the unimportant office of Steward to the Nabob's household, at a time when a Minister of the Goverment was wanted, and when the administration of justice through the country was at a stand".

CHAPTER V

CRIMINAL ADMINISTRATION : 1775-1782

Fortune again smiled on Reza Khan. He was reappointed Naib Nazim and guardian of the minor Nawab Mubarak-ud-daulah. The Sadr Nizamat Adalat was removed to Murshidabad and placed under his charge. He was grateful to the English Government for his reinstatement, but was dissatisfied with the proposed annual salary of Rs. 2,40,000. He petitioned for its enhancement but to no effect.¹

On 9 November 1775 Reza Khan attended a secret session of the Council to be formally invested with a khilafat. The Nawab's attendants were then ordered to withdraw and the Council imparted to him some "particular instructions." These enjoined him to take care that the courts were composed of the men of integrity and learning who would personally attend to their duties, strictly obey the rules and transmit their proceedings monthly to the Sadr Adalat. Reza Khan was required to be expeditious in getting the proceedings revised and fatwas passed by the Sadr Adalat. Finally he was himself to be quick in issuing the warrants of execution.

Copies of all regulations that had been introduced and all other plans that had ever been recommended were delivered to him. But Reza Khan had no obligation to follow any pre-determined plan. He had the discretion to confirm only those he approved and propose alterations and amendments where necessary. One matter was particularly stressed by the Council and that was strict attention to economy in all his establishments and alterations.²

Early in November, Reza Khan submitted nine proposals for the consideration of the Council. These he considered absolutely necessary for the proper functioning of the office of Naib Nazim, to which the Council had been "pleased to appoint" him.³

First of all, it was essential that his seal and signature should be authoritative in all matters relative to his office. Next, it appeared to him that so far as the Faujdari officers were concerned, changes in their salaries as also dismissals and fresh appointments were called for. The arrears of the Nizamat establishments again were to be paid off immediately. He hoped that the Council would afford him assistance and remedy whenever necessary, and would issue orders (a) to every zamindar and farmer to depute a vakil to the Sadr kachahri at Murshidabad for keeping direct contact with the Naib Nazim, (b) to the chiefs of districts to assist Faujdars in arresting the robbers and murderers, and also (c) to the Faujdari Adalats to furnish the Naib Nazim with a list of officers and salaries they received. Last of all, he requested for authority to pay the wages of the Faujdari and Adalat officers, for it was the "custom with the people here, to pay respect and obedience to the person" from whose hands they received their salaries.

Reza Khan took charge of his office and the Nawab's household on 2 December 1775. Four days later, the Governor-General and Council sent their reply.⁴ They wanted him to understand that it was not the English who had reappointed him, they had only recommended him to the Nawab. They promised him their full support and agreed in general to his proposals. They desired him to suggest any alteration that he judged necessary but rejected the proposal for posting vakils at Murshidabad, on the ground of its expensiveness. The Nawab's stipend was entrusted to his sole management on two conditions. He was to reserve one-fourth of the amount for the liquidation of the Nawab's debts and to submit to the Council annual statements of disbursements. Servants of the Nizamat Sarkar had not received their salaries for a long time. In the opinion of the Council, these arrears could be met by savings from the Nawab's expenses. As for Reza Khan's prayer for paying the officers of the Adalat and Faujdari, they directed that the principal officers would receive their salaries from him, while the inferior ones would receive theirs from their immediate chiefs.⁵

Before long, Reza Khan proposed a plan for the better regulation of the police and criminal courts. This plan was approved by the Council and instructions were given to the Provincial Councils of Revenue to afford requisite assistance and support in the execution of the plan.⁶

Reza Khan's plan⁷ provided for five new Adalats at Kalighat, Hijili, Kharagpur, Patna and Rajmahal in addition to the eighteen already existing. The monthly expenditure over these eighteen Adalats had been Rs. 9,978-11-0. A sum of Rs. 11,566-11-0 was assigned by Reza Khan for the twenty-three Adalats now to function. The monthly establishment charges of the Murshidabad Faujdari Adalat was reduced from Rs. 2,352 to Rs. 1,908. The sums of Rs. 832-11-0, Rs. 361, Rs. 740, Rs. 760 and Rs. 420 were assigned for the monthly expenses of the Adalats of Chitpur, Kalighat, Patna, Dacca and Burdwan respectively. The rest of the Adalats were each to have the sum of Rs. 385. The new plan made no alteration in their establishments.

The monthly establishment charges of the Sadr Nizamat Adalat were brought down from Rs. 3,409 to Rs. 2,909. A new Maulavi was appointed on Rs. 100 per month. On the other hand, the salary of the Daroga (chief judge) was reduced from Rs. 1,500 to Rs. 900.⁸

The process of trial as laid down by Reza Khan for the guidance of his officers was as below :—

The Faujdar whose primary business was to arrest criminals and bring them to trial before the courts of justice was empowered to exercise judicial power on certain petty offences. Persons accused of stealing rice, goats, sheep or cows were to be tried, punished or released by the Faujdar without any previous reference to the Faujdari Adalat. As regards a person arrested on a charge of murder, theft or highway robbery the Faujdar was to examine him in the presence of the officers of the Qanungo, zamindar, farmers and local people, prepare a report (Surat-i-hal) and send it to the district Faujdari Adalat along with a list of the stolen goods recovered by him. The Faujdari Adalat's duty was to scrutinize the

report and try the case. Those declared innocent by the Adalat could be immediately released by the Faujdar. As for those convicted, the Faujdari Adalat was to send a report to the Sadr Nizamat Adalat which in its turn examined the cases, confirmed the mofussil decrees, if these were just, and if not, passed new sentences. The sentences were then submitted to the Nazim for his warrant and thereafter sent to the mofussil courts concerned for local execution. The Sadr Nizamat Adalat having been transferred to Murshidabad, Daroga Sadrul Haq Khan was no longer required to affix the seal of the Nizamat on behalf of the Nazim. As regards the stolen goods of the prisoners, the mofussil court had to act according to the orders of the Sadr Adalat.

Mofussil judges were enjoined to determine only disputes relative to adultery and fornication and to punish the convicts with scourging and imprisonment. They were not to inflict capital punishment, *i.e.*, to dismember, put to death or execute the law of retaliation without a warrant from the Nazim. The Sadr Nizamat Adalat took cognizance of litigious quarrels and abusive language, adultery, fornication, oppression, pillage and disputes relating to divorce, and also undertook the examination of thieves, night murderers and highwaymen.

Reza Khan assured the Council that he would every month scrutinize the proceedings of each Adalat and take action against any one found guilty of remissness in duty, receiving bribes, showing partiality, levying fines or any other illegal act. Strict orders for proper administration of justice were sent under his seal to each kachahri and affixed to its door for the information of the people of all ranks. No officer was to deviate in any way from the laws and customs of the Adalat. Every month proceedings of the Adalats were to be transmitted to Reza Khan for close scrutiny by the Daroga of the Sadr Nizamat Adalat, Chief Qazi, Mufti and Maulavis. Monthly salaries having been provided for Qazis, they were forbidden to levy impost of even a single 'dam.'

Faujdari thanas as proposed by Hastings on 19 April 1774 had been only partially established. Hastings' plan

itself did not contemplate more than fourteen thanas which again covered only areas lying between Calcutta and Murshidabad, other districts of Bengal and those of Bihar being excluded. Moreover, the jurisdiction of each proposed thana extended from 80 to 100 miles on all sides. The parganas around Dacca were very much infested with the banditti. Merchants and travellers on the river from Dacca to the borders of Purnea were often victims of dacoity. No provision had so far been made for their protection. Reza Khan knew very well that "to correct the plan in a proper manner and to reduce the limits of the tannahs and chokeys to such an extent as they can properly guard and protect would put the Company to a heavy expense," but the Company had directed that the greatest economy should be observed. He had, therefore, no other way than to adopt the scheme of 1774. He only increased the number of thanas to twenty-six and chaukis (subordinate stations) to twenty-four. Even then the jurisdiction of each Faujdari thana extended over an area of 80 or 100 miles and in many places as far as 120 or 140 miles. Each thana had a staff of thirty-four people. Twenty of them were sepoys, the rest being a Faujdar, peshkar, naib and others. In several places which were notorious for robberies and murders, small parties of additional sepoys were stationed by the Company. As for the other districts, the Provincial Councils had instructions to supply sepoys on the application of the Faujdar in times of emergency.⁹ For the central Faujdari office which also was transferred from Calcutta to Murshidabad and placed under the charge of Reza Khan a sum of Rs. 485 was sanctioned. A total sum of Rs. 20,623 was allotted for the monthly establishment charges of the new Faujdari thanas and chaukis.¹⁰

The instructions which were given to the new Faujdars for regulating their conduct were almost the same as those chalked out by Hastings in May 1774. The foremost object of a Faujdar's establishment was to maintain law and order within his area. In the discharge of his police functions he could partially exercise certain magisterial powers as well.

Zamindars, talukdars and farmers of revenue were asked to assist him. The zamindar's servants were all enjoined to obey the Faujdar's orders. Provincial Councils had instructions from the Calcutta Council to take 'muchalkas' from zamindars with a view to ensuring their co-operation with Faujdars. The latter, however, had no direct executive authority over the zamindars. Their chief, Reza Khan himself hardly possessed power and means equal to his responsibilities. If any zamindar protected a criminal or neglected his duty, it was for the English Government alone to compel him to due obedience. Reza Khan's plan did not introduce any innovation. Its aim was to extend the Faujdari system of 1774 all over Bengal and Bihar and at the same time put "the Company to as little expense as possible."

The Directors had all along felt the necessity of appointing an able and 'ostensible' minister during the Nawab's minority. The young Nawab's education had been badly neglected and he was an easy prey to his menial servants who utterly lacked in ability and integrity. This factor confirmed the views of the Directors in favour of the reappointment of Reza Khan whose official experience qualified him for so high a station in a more eminent degree than any other 'native' known to them. His abilities were sufficiently proved and no charge of maladministration could be established against him either during the strict investigation of his conduct or since his retirement. On these considerations, the Court of Directors highly approved of Reza Khan's reappointment as Naib Nazim.¹¹

Reza Khan's position, however, was far from being secure, notwithstanding the patronage of Francis' party and the changed attitude of the Directors. His restoration with full powers had been strongly opposed by Hastings and Barwell. Since the day he had joined hands with the triumvirate, Hastings started looking upon him as a personal enemy. Monson died on 25 September 1776. His death occasioned a revolution in the Council. Before that, it had been possible for the trio to thwart the plans and proposals of their Governor-

General. But after Monson's death, the steady adherence of Barwell and his own casting vote enabled Hastings to restore the constitutional authority of his station. Clavering expired on 30 August 1777. In December Wheler came to fill up the vacant seat and chose to side with Francis. But Hastings had no longer any reason to be afraid of.

Among Reza Khan's enemies in Murshidabad, Munni Begum was the most powerful. She never loved to see him in power. In particular, she could not tolerate his authority over the household affairs of the Nawab. To counter any risk of losing office for the second time, Reza Khan at the end of 1776 sought to consolidate his position by inducing the Nawab to marry a woman of his choice. But Munni Begum could see through his scheme and at once wrote to Hastings requesting him to prevent this marriage, on the plea of its being harmful to the Nizamat.¹²

But the person who was most unceasing in blaming Reza Khan was the Nawab himself. He used to complain bitterly that Reza Khan treated him with indignity and conducted the administration without consulting him. He was no longer in a mood to put up with Reza Khan's tutelage, the more so as he was nearing majority.

The Nawab wrote several letters¹³ appealing to Hastings to restore Munni Begum to the sole management of the Nizamat which was "in fact her own family." The Nawab fretted under a painful suspense. "With what justice", he bitterly asked, "can you refuse your compliance with the measure and leave the administration of the affairs of the Nizamut in the hands of a stranger, with whom I am much discontented, instead of placing it in the hands of the Begum, who is the Head and patroness of my family?"

In February 1778, while repeating the troubles he had been suffering from Reza Khan's reinstatement, the Nawab solicited the permission to take upon himself the management of all the offices held by Reza Khan.¹⁴ His arguments in favour of Reza Khan's removal were that the latter used to see to his personal interest only and not to the Nawab's welfare.

Moreover, the Naib Nazim was neither related to the Nawab nor sincerely attached to him, and therefore, the concentration of so much power in Naib Nazim's hands was, in the Nawab's opinion, detrimental to the interests and prestige of his family. Last but not the least, Nawab pleaded that he had come of age.

The next portion of his letter, strikingly enough, shows the Nawab in a most assertive mood. He was asking for the management of the Subahdari not as a gift but as his "right". The Company which, he wrote, had acquired so great an authority in this country was indebted for its advantages "solely to the warm support" of his ancestors. "Should the Company", he added, "disregarding the situation and rights of this family, refuse their approbation to my request which is perfectly just and right, it will be highly inequitable."¹⁵

The 2nd March was fixed by the Council for the consideration of this matter. On that day the majority formed by Wheler and Francis seized the opportunity of Barwell's absence and by outvoting Hastings' objection carried the resolution that the Nawab's letter recorded on 23 February should be referred to the Court of Directors.¹⁶

At the next meeting of the Council (5 March) a motion was initiated by Hastings for reconsidering the subject on the plea that Barwell had been absent from the last meeting. As usual, Francis and Wheler recorded their dissent and the preceding resolution was rescinded by Barwell's vote together with Hastings' casting vote. Hastings and Barwell supported the Nawab's claim in the light of positive and incontestable rights of his office as Nazim of the provinces. Barwell said, "A reference at this time for the orders of the Company would be an evasion reflecting on their honour and unbecoming the justice of the Government." Hastings added, "He (Nawab) has an incontestable right to the Nizamut; it is his by inheritance: the dependants of the Nizamut Adawlut, and of the Fouzdarry, have been repeatedly declared by the Company, and by this Government, to appertain to the Nizamut."¹⁷

Francis, on the other hand, argued that the Nawab was utterly incapable of performing any of these functions and also that any acknowledgment of his rights did not preclude the necessity of recommending to him a wise and able minister. Letters written by the Nawab only a few months back showed, in Francis' opinion, how ill-qualified he thought himself to be for these very offices. Francis was convinced that the object of the present measure was to restore Munni Begum, in fact if not in form, to the power which she had been formally divested of. Lastly, he held this resolution as a direct and positive disobedience of the orders of the Directors who had highly approved of the reappointment of Reza Khan.

Outvoting these arguments, however, Nawab's demands were complied with. He was given control over his own household, the Nizamat and the Faujdari departments. On 7 March 1778 an intimation of the resolution was given to Reza Khan who accordingly resigned his authority.¹⁸

We have noted the solemn words of high policy exchanged by Hastings and his opponents ; but a private confession of Hastings would show that in supporting the dismissal of Reza Khan, he was primarily guided not by matters of state policy, but by personal animosity. No doubt, the same motive might be associated with the stand taken by Francis.

In a letter to Francis Sykes, Hastings explained his motives beneath the whole transaction. Starting his review from the occasion when he had to first deal with Reza Khan (*i.e.*, during his imprisonment and trial), Hastings narrated how he had allowed Reza Khan a fair trial and shown him every mark of respect and consideration and how forgetting all that Reza Khan had allied himself with the hostile trio. At any rate, Hastings said that he had no intention to be vindictive with Reza Khan. All that he meant to do was to give the Nawab the management of his household, and leave Reza Khan in charge of the public offices of the Nizamat with his jagir and allowances. With this purpose he had commissioned Anderson to secure Reza Khan's assent to these proposals along with a solemn promise to entertain no political connection which was adverse

to Hastings, nor to engage in any intrigue against his authority. By that means, Hastings admitted, he had sought to deprive Francis of the aid of Reza Khan, "the most powerful of his agents." But these overtures were scorned by Reza Khan. Hastings argued that he was compelled by circumstances to take this action, "Mahmud Reza Cawn having in effect declared by his refusal of my advances that he would be my enemy, I had no alternative left but to disarm both (Francis and Reza Khan) by the same act ; by investing the Nabob himself with the management of his affairs, and divesting Mahmud Reza Cawn of the Neabut."¹⁹

As any immediate change might disturb the peace and order of the country, the Nawab was requested to permit the existing judges and officers of the Nizamat Adalat and the Faujdari to continue in office until a new arrangement was made. He was also desired to prepare a plan for the readjustment of the officers and send it to the Council through the regular channel of the Governor-General, for their information and opinion before it was carried into effect. Martin was commissioned on 17 March to attend the Nawab's Durbar on behalf of the Company. The Nawab was asked to consult with him without any reserve and also to communicate to him any case he wanted to refer to the Governor-General.²⁰

But the Nawab had yet to feel easy. He complained on 25 April that Reza Khan had not yet shown any sign of relinquishing any of his pretensions to the criminal administration. This was unbearable to him. In the same letter he proposed to appoint Sadrul Haq Khan, who had been long attached to him, and was a man of "great integrity and worth," to be the Naib Nazim in charge of the civil and criminal courts and Raja Gurudas to the Diwani of the Nizamat. Reza Khan used to receive an annual salary of Rs. 2,40,000. The Nawab desired a c-allocation of the sum in the following manner :—

	Rs.
Munni Begum	... ... 72,000
Babbu Begum	... ... 36,000

	Rs.
Sadrul Haq Khan	78,000
Gurudas	72,000
Total	<u>2,58,000</u>

This sum exceeded the amount of Reza Khan's salary by Rs. 18,000. But Sadrul Haq Khan was then receiving that very amount as his salary for the post of Daroga-i-Adalat. If, the Nawab suggested, this sum was utilised to meet the deficit in the new arrangement, the question of money would be solved.

This scheme was considered by the Council on 11 May 1778. Francis and Wheler criticised it as before only to be outvoted. The proposed appointments and allotments of salary were sanctioned. Sadrul Haq Khan and Raja Gurudas were directed to proceed to Murshidabad.²¹ Such a change could not but please the Nawab and Munni Begum who had been so long praying and intriguing for the fall of Reza Khan.

At long last, Mubarak-ud-daulah considered himself the master of the Nizamat. Instead of asking the new Naib Sadrul Haq Khan to deal out justice, he himself started looking after the Adalat and Faujdari departments. The old officers continued in office and he issued to them letters of assurance. On his request Munni Begum permitted Itibar Ali Khan, her private servant, and Munshi Abdur Rahim to wait on him and carry out his orders. People came to the Nawab and clamoured for justice. The Nawab, therefore, arranged that Abdur Rahim would go through the petitions, report the subject matter to him and on getting them sealed and signed by him, send them to the officers concerned.

Hardly could the Nawab dream that the prize for which he had striven all these years was again slipping off his grasp. Hostile representations were meanwhile pouring into Hastings' ears that under the advice of Itibar Ali Khan, arbitrary changes were often made in the staff of the civil and criminal courts. On 6 June 1778 Hastings directed the Nawab to send immediately a Sanad in the name of Sadrul Haq Khan, as also to abstain for the time being from passing orders on public affairs. From

the tenor of the Sanad sent under the orders of the Governor-General, the Nawab could clearly see that he was going to be divested of all authority and reduced to his former subordinate position. He would no more seal and sign the public documents. He was shocked. He recollects a couplet which seemed to depict his own plight : "The shapelessness of my person must be to blame, for a robe of honour bestowed by thee was never known to ill-fit a man." He wrote two letters on 13 June, bemoaning his lot. He ascribed his misfortune to the false and malicious representations of mischievous persons. The Nawab wondered if his critics wanted him "to drudge at the petitions like an ordinary muharrir." If at this stage, and after attaining majority, he was forced to make over his charge to a deputy, it would be surely attributed to his incompetence. He appealed to the mercy of Hastings not to disgrace his "younger brother" in the eyes of the people, but all this was to no effect.²²

He had to install Sadrul Haq Khan in the Niabat of the Nizamat Adalat, Faujdari thanas, Qaza and Ifta of Bengal, Bihar and Orissa. Hastings gave a good deal of advice to both the Nawab and his new Naib. To the Nawab he wrote that Sadrul Haq Khan should be given a free hand in the appointment and dismissal of officers both in the Sadr and mofussil and that all papers bearing his signature should be recognised as valid. Hastings was determined that neither the Nawab nor he himself should interfere in Sadrul Haq Khan's business by recommending any one for appointment. For the dignity of his office, Sadrul Haq Khan was to be addressed as Muhafiz' ul-Mulk, Muizzu'd-Daulah Sadrul Haq Khan Bahadur Nusrat Jang. At the same time, the Khan was instructed to pay to his master every mark of respect due from a servant and to communicate to him all the business of his office. He was told not to meddle in the personal affairs of the Nawab and his household.²³ Soon a reply came from the Nawab intimating that he had relinquished all concern with the criminal administration, leaving the entire management in Sadrul Haq Khan's hands.²⁴

Thus Sadrul Haq Khan assumed the charge of the Adalat and Faujdari departments with an annual salary of Rs. 78,000. His selection was unfortunate, the more so in view of the rough circumstances which needed a man of strong calibre. Even with due latitude to the attacks of his opponents, the remarks of Hastings' admirer Ghulam Husain cannot be ignored. He too stated that knowing full well "that so much business was by all means above the old man's capacity and strength," Hastings had devised these offices as a reward for Sadrul Haq Khan, for he "had proved himself an assiduous worshipper at the altar of his (Hastings') power."

The new Naib Nazim is said to have been always sickly and at that time worn out with old age so much so that even in going to or coming from Court and in presenting himself before the Nawab, "he was inadvertently guilty of some actions that discovered the debility of his body and not only detracted much from his weight, but also rendered his person ridiculous."²⁵

With Sadrul Haq Khan's promotion Munni Begum assumed a new life and renewed her attempts to re-establish her predominance in the Nizamat. She wanted to keep both the Nawab and his new Naib as tools in her hands. When she found stiffer resistance from the new Naib than what she expected, she began to make things extremely uncomfortable for him by fomenting disaffection on all sides and above all, by inciting the Nawab against him. From behind the screen and keeping the Nawab in forefront, this shrewd woman continued to play her game.

Within a short time, Sadrul Haq Khan came into open clash with the Nawab. Reports of his disrespectful behaviour to the Nawab and of his ill-treatment of the Maulavis were conveyed to Hastings. He was told that Sadrul Haq Khan had given offence to the Nawab by assuming a degree of equality with him and that he treated the Qazis and Maulavis of the Adalat with such indignity that they had resolved to resign their offices. These reports did not appear to Hastings as entirely baseless. On 20 August he wrote to the Khan to immediately pacify the Nawab and Maulavis. From his own standpoint, the Khan had much to say on this issue. His explanation was that Maulavi

Muhammad Zakir, who had been once dismissed but provided by his predecessor Reza Khan in the Sadr Adalat, had leagued against him, along with other hostile officers of the Court and the chief manager of Munni Begum. They wanted their own men to be appointed to the various offices. As the Khan refused to do so at their command they had started a treacherous campaign of misrepresentations and malicious imputations. They were backed by some English gentlemen also. From the conversations of the mischief-mongers at Murshidabad, it appeared to the Khan that they were seeking to possess all real power at his expense. They had the Nawab under their control. Now if Sadrul Haq Khan refused to be a mere tool in their hands, they would continue to disturb his work and prejudice Hastings against him. He wrote, "His Highness himself is not deficient in regard for me, but certain bad men have gained an ascendancy over his temper, by whose instigation he acts....They cause the Nabob to treat me sometimes with indignity, at others with kindness just as they think proper to advise him."²⁶ Vain endeavours, he added, had been made by him to induce Ghulam Yahya Khan, Taj-ud Din, Muhammad Kalim and Muhammad Israil and all Maulavis of the Sadr Adalat to withdraw their resignations. His conclusion was that they had resigned out of sympathy for the dismissed Naib Nazim, Reza Khan. Sadrul Haq Khan was told by the Nawab to fill up the vacancies with efficient men of his choice. The above explanation satisfied Hastings who assured Sadrul Haq Khan of his steady support and yet wondered how such contrary reports could arise.²⁷

The influence of hostile persons, however, prevailed and the Nawab could by no means be reconciled to Sadrul Haq Khan's authority. His letters to Hastings early in September 1778 show that the situation was beyond his control.²⁸

The bills for the salaries of the officers of the civil and criminal courts, and for the rations of prisoners in the Sadr and mofussil jails as also sundry other papers were accumulated and complaints and clamours over the delay in their disposal began to pour in from every quarter. When Sadrul Haq Khan represented the matter to the Nawab, he turned a deaf ear. At last, the

Naib petitioned the Nawab for orders to the district officers to discharge the bills bearing the Naib's seal. At the Nawab's asking, he submitted a draft of the proposed instructions. But the orders were never issued. The object of the mischief-makers was, as interpreted by Sadrul Haq Khan, to create discontent among the officers by withholding the payment of their salaries and also to starve the prisoners to death by stopping their rations. This would enable them to ascribe the whole situation to the incompetence of the Naib. As regards the alleged misbehaviour with the Maulavis, Sadrul Haq Khan showed how baseless this was. When requested to withdraw his resignation, Maulavi Ghulam Yahya Khan replied that he had resigned his post before the arrival of Sadrul Haq Khan who was therefore in no way to be blamed. Maulavi Muhammad Kalim and his son, Muhammad Israil when approached consented to resume their duties, but reassured by "mischievous" persons left Murshidabad without informing the Naib Nazim. When pressure was given to Maulavi Taj-ud Din, he declined the offer on the plea that it did not look well to reaccept a post after giving it up. As for the Faujdar of Murshidabad, Saiyid Muhammad Khan, he had resigned his post out of compassion for his friend, Reza Khan.

In great distress, Sadrul Haq Khan sent for Governor-General's perusal the copies of petitions, reports and draft of his letter to the Nawab, and implored him to issue prompt orders regarding the disposal of pay bills for the months of June and July, the place for hearing public petitions and lastly the appointment of a Faujdar and a peshkar at the thana of Murshidabad.

In a separate letter, the Naib Nazim laid before Hastings several points for necessary orders which were given on 14 September 1778. His first prayer was that the district officers and zamindars should be ordered to recognise him as a confirmed Naib Nazim with powers to appoint and dismiss all officers, and to accept his seal and signature on all papers relating to his office as valid and binding. He also wanted to exercise full control over the sepoys of all the civil and criminal courts.

These requests were granted. In view of the inadequacy of the police stations in some places and superfluity in others, the Naib Nazim's second prayer was for permission for necessary alterations. In particular, the frontier district of Sylhet needed a Faujdar. In reply he was asked to put up his proposals to the Council under the seal of the Nawab. Although the Nawab was requested to treat him with the same respect as was shown to his predecessor, the Council did not entertain his claim to the salute of guns, an honour enjoyed by his predecessor, for the simple reason that while Reza Khan had been vested with the full authority of a Naib Nazim, Sadrul Haq Khan was appointed Naib for the judicial administration only.

The patronage of Hastings, however, failed to stop the Naib Nazim's troubles. In fact, the work of the Faujdari was at a standstill. He was, therefore, desired by the Council to supply a list of those officers of the Nizamat Adalat who had resigned or were still in service and also of the nominees for the posts of Faujdars and amlas of the Adalat. The required list was submitted through Martin without delay.²⁹

The chaos and confusion that pervaded the criminal administration not only increased the Naib Nazim's anxieties, but also troubled Hastings. Cases of murder and robbery were daily reported from every part of the country. Hastings was convinced that this was clearly owing to the want of proper authority in the hands of Sadrul Haq Khan. When at the request of the Nawab and Munni Begum, this gentleman was appointed to the charge of Faujdari Adalats, Hastings had naturally expected that they would support the Khan. On the contrary, he came to find that the Nawab was a mere cypher throughout and a most iniquitous use of his name and authority had been made by his own dependants as well as those of Munni Begum. Actuated by selfish and avaricious motives, these people disturbed the administration to such an extent as to throw the whole country into a state of utmost confusion from which nothing could retrieve it "but an unlimited power lodged in the hands of the Superintendent." This confusion Hastings wanted to obviate by directing Mubarak-ud-daulah not to

concern himself in any manner in the conduct of the business entrusted to his Naib.

"I therefore request that your Excellency will give the strictest injunctions to all your dependents, not to interfere in any manner with any matter relative to the affairs of the Adawlut and Phouzdarry ; and that you will yourself relinquish all interference therein and leave them entirely to the management of Sudder ul Hoc Khan. This is absolutely necessary to restore the Country to a state of tranquillity." So wrote Hastings to the Nawab (10 October 1778). The same direction was given to Munni Begum, to whom Hastings further complained that her confidant Itibar Ali Khan was at the root of all trouble and should not be trusted at all.³⁰

Munni Begum strongly denied having any connection with the affairs of the civil and criminal courts. She stated that she was quite contented with the stipend settled on her and that in order to make sure she had enquired into the conduct of her servants and found none in any way guilty. It was a sheer bad luck that poor Itibar Ali Khan, a most loyal servant of hers, should happen to fall in Hastings' disfavour on the insinuations of the interested persons. Sadrul Haq Khan, she taunted, was thus trying to hide his incapacity by putting the blame on others. She demanded to know the names of those servants who interfered in the Khan's affairs. The Khan then called on Munni Begum and a long conversation followed (18 October).³¹

It is not known how far these discussions helped to clear the vicious atmosphere of intrigues that had subverted the administration of the Nizamiat. Yet, thanks to the intervention of Hastings, the last year of Sadrul Haq Khan's life passed with comparative ease. He could now issue bills and orders to the district officers under his own seal and signature. New officers were appointed at the headquarters as well as in the districts. On 17 October he sent for the Nawab's inspection all the khilats made for these officers. He then himself took the recipients of khilats to the Nawab who invested them with his own hands. Maulavi Muhammad Wasil Khan was appointed Qazi-ul-Quzat. Arrangement was made with

Chief Justice Impey for the training of a Nizamat vakil in the forms and procedure of the Supreme Court of Judicature. A reduction in the Faujdari expenses was effected by curtailing the salaries of naibs. Some of the officers appointed at the time of his predecessor were still trying to make mischief. As a result, in one case the prisoners sent by Playdell escaped at night with their irons and fetters. Most of the absconders were however seized before long and in order to secure the recapture of the rest, the Daroga of the jail whose connivance caused the whole affair and some of the town Kotwals were taken into custody. On finding officers appointed by Reza Khan extremely unreliable, Sadrul Haq Khan had to dismiss some of them and contemplate the removal of the rest. He was compelled to discharge the dishonest Maulavi Kasim, for he used to communicate to Reza Khan concocted stories about him and the Durbar. In July 1779 all his proposals regarding the Faujdari affairs were approved.³²

But Sadrul Haq Khan's days were numbered. All throughout this period he had often been unwell. Now he was growing weaker still. Rumour had already spread that Reza Khan was going to be reappointed. What the ailing Naib felt, if it reached his ears at all, we do not know. But this was the last thing the Nawab would like to see. He at once lodged his protest with the Governor-General. In fact, the rumour was not unfounded. But Sadrul Haq Khan was destined to escape the disgrace of dismissal. He died on Sunday, 28 November 1779, at noon. Soon after, the Nawab wrote a letter requesting the Governor-General to make a prompt arrangement for the Nizamat affairs. Any delay, he feared, might create a total disorder.³³ But to his bad luck only a fortnight ago had arrived a significant dispatch from beyond the seas, conveying the Court's positive orders for the reappointment of Reza Khan as Naib Nazim. In the week preceding Sadrul Haq Khan's death, the Council had to sit twice to take this letter into serious consideration.³⁴

The Directors strongly disapproved of Reza Khan's dismissal. His removal without the smallest proof of his

infidelity to the Company or maladministration appeared to them absolutely unnecessary and unjustifiable. As regards the Nawab's assertion of his "right," they only observed that in fairness to the Nawab and the Company, they must employ such ministers as they deemed necessary. They wanted to remind him that a Naib Subahdar's office had continued without interruption or protest, during the regime of his predecessors who were no less capable than this youth of twenty. The Nawab's letters received from August to November in 1777, confirmed their suspicion as to his design to bring forward Munni Begum despite of the Court's previous declaration of a charge of embezzlement against her.

In their letter of 27 May following, they directed the Council that the allowance formerly enjoyed by Reza Khan should be paid to him from the day of the arrival of their letter of 4 February 1779 while the salaries granted to Sadrul Haq Khan, Gurudas, Munni Begum and Babbu Begum should all be discontinued.³⁵

On 30 November the Council conveyed to Nawab and Reza Khan the orders of the Court of Directors.³⁶ While Reza Khan's "tongue" was exuberant with "thankfulness to the Company for their great kindness," the Nawab felt very sore. At first, he refused to comply with these orders. His letter of 10 December shows the depth of his shock. Perhaps, he wondered, the Court had forgotten that he was no longer a minor. "Notwithstanding, the number of children and dependants which I have; they still reckon me an infant, otherwise," he asked, "would they have determined to place my family under the authority of another?" "In a word," he continued, "I administer the affairs of the Nizamut, which are in fact the affairs of my own family. ... I will never of my own consent, admit the said Nabob to any authority in the affairs of the Nizamut, Fauzdar and Adawlut dependent of the Nizamut; and from motives of justice I expect, regarding the rights which my late father was allowed to have had on the Company, you will never consent that any compulsion be put in question; and

that you will use every means for the preservation of my credit, honour and dignity."³⁷

Soon the Nawab had to change this attitude. On a further consideration, he came to realise the seriousness of his stand in the background of his helplessness. Perhaps, Hastings' private advice too had something to do with it. On 22 February 1780, Hastings received a letter from the Nawab, giving his assent to the restoration of Reza Khan, of course, under protest. The Nawab wrote, "as the Company's orders are so positive, and since you, whom I have always considered, and still consider as the support of myself and my family, advise me to comply with them, I am left without remedy." Nawab had only two things to beg for. He refused to see Reza Khan interfering in his household matters, and next he wanted positive directions to be given to Reza Khan to act always under the Nawab's advice and to put Nawab's signature on all papers.

Thus Reza Khan was reinstated in each and every part of the authority vested in him by the Council's Resolution of 18 October 1775, with an annual salary of Rs. 2,40,000 with effect from 13 November 1779. From that date ceased the salaries and allowances granted to Munni Begum, Babbu Begum, Raja Gurudas and Sadrul Haq Khan, and the salaries overdrawn by the Begums were refunded. The Resident at Durbar, D'Oyly informed his Government (1 March 1780) that Reza Khan was invested with a khilat on behalf of the Company and the whole transaction was conducted in a satisfactory manner, both Nawab Mubarak-ud-daulah and Nawab Muzaffar Jang showing every degree of respect and attention to each other. But this apparently satisfactory report was marked by one black spot. As directed by the Council, D'Oyly had requested the Nawab to bestow a khilat on Reza Khan as a mark of his favour. Although the Nawab agreed, Reza Khan could by no means be induced to accept it.³⁸

The preceding account of the alternating rise and fall of Reza Khan and Sadrul Haq Khan, no doubt, illustrates how the intrigues and the state of insecurity that vitiated the atmosphere of Murshidabad were uncongenial to the smooth dispensation

of justice in and around the capital and gave little scope to the Naib Nazim to check the actions of the mofussil judges. With the recall of the collectors from the districts in 1774, the subordinate courts had been released from the close supervision of the Company's servants. So in their little kingdoms the local judges continued to render justice, each interpreting the Quranic Law in his own way. Even when Hastings had steered the course of criminal justice, he failed to induce the Muslim judges to modify the anomalous provisions of their law. And now that Hastings had withdrawn from that sphere, they could not be surely expected to revise their decisions merely on the basis of his recommendations.

The few cases below would indicate how the common people were left to the mercy of the individual judges who would sometimes see no point in incurring the displeasure of local delinquents by attempts at fair justice.

On 21 June 1776, Reza Khan was requested by Hastings to investigate into a complaint preferred against Muhammad Ali Beg, Faujdar of Nadia. The petitioner stated that about 13 Aswin last Panchu Das, son of Kanai Das, had taken the petitioner's nephew, Sibu to his house at 10 o' clock in the morning and when Sibu was brought back to his uncle the same evening, he had a gaping wound on the head, which was caused, as Sibu alleged, by Panchu Das with a hatchet. On the fourth day, the boy succumbed to his wound. Muhammad Ali Beg, Faujdar of Nadia, sent for both Kanai and Sibu's uncle and held an enquiry. He found Kanai guilty and ordered him to compensate the petitioner for the loss he had suffered by the death of his nephew. But the scale was turned when on the next day the Faujdar again sent for Sibu's uncle and forcibly made him write that he had no grievances and even more, directed him to pay a penalty of Rs. 13 without giving any sort of redress. It was to Hastings that the unfortunate man turned for remedy.³⁹

About the middle of 1779, Hastings had to draw the attention of Sadrul Haq Khan to certain petitions against the miscarriage of justice in several trials. It appeared from Henohman's

representation to Hastings that in consequence of the murder of two dallals (brokers), one peon and one coolie of the Malda factory, some employees of that factory had been arrested on suspicion, then tried and sentenced to imprisonment. On a study of the proceedings of the whole case, Henchman was convinced that the convicts were innocent and the so-called confession was obtained from them by severe torture. As early as in 1773, Hastings himself had expressed his doubt as to the process of the so-called confession, a concomitant factor in all Muslim trials. On this occasion, Hastings directed Sadrul Haq Khan to make a thorough enquiry into the conduct of the officers of the Faujdari Adalat and take effectual measures to stop similar irregularities in future.⁴⁰

The fate that befell an old Armenian for the sake of blood-money is an interesting study. Dawson Gregory, an Armenian of Calcutta, submitted an arzi to Hastings stating that one day a servant of his father-in-law suddenly fell unconscious and died. The relatives of that servant suspected his father-in-law, an old man of seventy, to be the murderer and immediately filed a criminal suit against him in the Chinsura court, where he was tried according the the Dutch Law and acquitted. They also brought a similar suit in the court of the Hugli Faujdar, who then took the old man into custody. The petitioner tried to secure his release on bail on grounds of old age and sickness. He also produced eye-witnesses. But the Faujdar paid no heed to his requests. The trial continued for six months, the accused was sentenced to pay Rs. 3,000 as blood-money to the heirs of the deceased. Being unable to pay such a heavy amount, the old Armenian vainly prayed to the Faujdar for his release on bail. At last he expired in prison for lack of care and medical attendance. The corpse, the petitioner added, remained in prison for three days. Not yet contented with the death of the old man, the plaintiffs were trying to take possession of his house together with all his goods in satisfaction of their claim.⁴¹

Still more glaring and pathetic was the case of Damri Das. According to his complaint to Hastings, Damri Das had in 1770

joined the English army at Monghyr and proceeded to fight the Rohillas leaving behind his wife and a five-year old son in his house at Sultanganj in Bhagalpur. During his absence of two years, his landlord Fakirchand, a well-known Brahmin merchant, formed an illicit relation with his wife which resulted in her pregnancy. Fakirchand wanted to cause abortion to hide his infamy and in the name of medicine gave her poison which, however, did not act. Thereafter, added Damri Das, Fakirchand employed two men, Murli and Balchand, to murder her with her child. One day in May 1772, they took her and her child to a jungle between Bhagalpur and Monghyr under the pretence of conducting them to Damri Das. There Murli killed her with a sword and cut off the throat of the sleeping child. The murderer was traced with his accomplices. They confessed before Barton and were sentenced simply to imprisonment. Six months later, when Barton was transferred from Bhagalpur, Raja Debi Singh, Naib Diwan to Middleton, Resident at Murshidabad, released Fakirchand and detained only the two other convicts. Damri Das then appealed to Middleton and Fakirchand was rearrested. Six months wore on without any judicial action being taken against the culprit and his accomplices. All prayers of poor Damri Das fell on barren ground. Worse still, when Middleton left for Calcutta, Devi Singh released all the three prisoners. Disappointed on all sides, Damri Das went to Calcutta and brought the case to the notice of Hastings.⁴²

Delay of justice and lack of authority for enforcing the decree of the court were two usual features of the administration of criminal justice. For instance, on 17 June 1779 Hastings had an occasion to draw the attention of the Hugli Faujdar to a case which had been pending for seven years in the Faujdari Adalat of Hugli. Even when the case was decided in favour of Ananda Ram Bose, the rights of the decree-holder were not restored to him for a long time.⁴³

However much the Company might have endeavoured to prop up the worn-out machinery of the Nizamat to dupe the foreign nations and check their revival in Bengal, the powers

that remained in the hands of the Nazim were so unsubstantial that they could deceive none. The story of Sanson would show how day after day even an ordinary agent of a French factory could defy the Naib Nazim's orders which were to him perhaps a "loud-sounding nothing."

In 1775 Sanson, an agent of the new French factory at Mohanpur in the Midnapur district, was charged with assaulting a local ryot. When summoned to appear before the Faujdar's court of Midnapur, he refused to attend, whereupon the Provincial Council of Burdwan allowed a military force to support the court and compel Sanson's attendance by surrounding his house for some months, but without any effect. Reza Khan was so much troubled by his refractory conduct that in February 1776 he wrote several letters to the Governor-General asking his help. Hastings directed the Council of Burdwan and Capt. Briscoe, the Commanding Officer of Midnapur, to give the Naib Nazim and the Adalat officers every assistance in this matter, but at the same time reminded Reza Khan that he had full powers to compel Sanson to obey the criminal courts and that he must make use of the authority that was vested in him. For that purpose he must take such action as his own sense of duty would suggest ; it was no use asking Hastings always for orders and instructions. Careful steps were then taken for his arrest. But when he was forcibly brought before the court, Sanson abused the complainant Bansidhar and behaved most disrespectfully. Time and again, Reza Khan had to ask Hastings how that Frenchman was to be treated for his contemptuous conduct. Sanson was thereafter brought to Calcutta and tried in the Supreme Court, inspite of Reza Khan's objections. But even after the Supreme Court had decided that he must stand his trial before the Adalat of Midnapur, Sanson managed to escape and fled probably to Chandernagore. Under these circumstances, Hastings could only exhort Reza Khan to take proper steps to vindicate the dignity of the Nazim.⁴⁴

At any rate, Nazim's powers were not commensurate with his responsibility. The vindication of its dignity could no longer

be expected of an authority that could neither command respect nor coerce others to obedience. With an impoverished fund and continuous dependence on the Company for money, with inadequate police forces and court intrigues clogging his steps, the Naib Nazim was not in a position to compel either his subjects to obey the decrees of his courts or the local judges to follow a uniform and fair procedure of adjudication.

The fun lies in the fact that though the Governor-General could no longer be held to be directly connected with criminal administration, it was to him that the 'natives' looked up in the last resort for justice and redress of their grievances.⁴⁵ Circumstanced as he was, the Governor-General could not help much. The petitions he received from the Company's servants in the mofussil, the Provincial Councils as also directly from the native population could only be forwarded by him to the Naib Nazim for impartial investigation and exemplary punishments to miscreants. He could only advise the Naib Nazim for prompt action. Criminal administration not being his direct charge, it was not his business to watch if his directions were in all cases obeyed or not. Thus all throughout this period the old anomalies continued in full measure.

The Supreme Court also turned out to be a serious clog on the smooth administration of criminal justice. Within a few months of its establishment, two cases of conspiracy occurred which show how unwilling was that Court to recognise any distinction between the servants of the Company and those of the Nawab so far as the jurisdiction of that Court was concerned. In both the cases, Rai Radhacharan, a vakil of Nawab Mubarak-ud-daulah was sued against along with others. Depositions concerning his alleged conspiracy were given on 20 April 1775. The majority of the Council declared him to be entitled to "the rights, privileges, and immunities allowed by the Law of Nations and the Statute Law of England to the representatives of Princes." In this connection, the subject of the Nawab's position as a sovereign prince also came up for serious discussion on 28 June. On the one hand, the Company's Counsel sought to prove that Nawab Mubarak-ud-daulah possessed the attributes of sovereignty

and on the other, the Counsel for the prosecution as well as the members of the late Council—Lane, Hurst, Vansittart, and Hastings himself contended that the Nawab's sovereignty was a mere delusion. Chief Justice Impey concluded, "Nothing, therefore, is left to Mubarick but an empty title."⁴⁶ As for Radhacharan's claim for immunity, it was unanimously rejected by the Court.

Impey declared, "All that is determined in this case is that Mubarick ul Dowlah who has surrendered his power entirely into the hands of the English Company, cannot himself, nor can the East India Company in his name protect the delinquents subject to the jurisdiction of this Court, from being punished by the laws of Great Britain."

Towards the end of 1775, a warrant was issued by the Supreme Court for the arrest of two persons for debt. These two gentlemen, Taji Ray and his brother Hinganlal, were servants of the Nizamat and had never been in the service either of the Company or of any British subject. The plaintiff Sambhunath also had no connection with the Company. Nawab's letter of complaint against this act reached the Council on the 2nd day of January next. The affidavit sent by the Chief Justice to the Governor General stated that the defendants were residents of Calcutta at the time when the cause of action accrued. The issue was whether the Supreme Court could assume jurisdiction over the people living outside the limits of Calcutta and the British factories by virtue of the single circumstance of their previous residence in Calcutta. The Council, however, did not think it proper to interfere in any manner with the Nawab and the judges. In their reply to the Nawab's letter, they gave the opinion that these people being now the servants of the Nizamat, the Supreme Court had no jurisdiction over them. For the Nawab's further information, they also sent him a copy of that Act of Parliament from which the Supreme Court derived its authority, and left it to him to take such measures with the advice of his ministers, as he might judge necessary for the support of his own dignity and the rights of the Nizamat.⁴⁷

Two years later, a similar warrant was issued against

Decruz, another servant of the Nawab. Nawab wrote a letter to Hastings desiring him to cause the recall of the warrant. Hastings replied (15 January 1778) that in such cases he had no authority to interfere with the Supreme Court for its jurisdiction extended over all persons who were or had at any time been British subjects. Though in the Nawab's service, Decruz was a British subject and fell, in Hastings' opinion, under the jurisdiction of the Supreme Court. Hastings, therefore, advised the Nawab to get somebody in Calcutta to stand bail for Decruz and answer the claim preferred against him.⁴⁸

Early in September 1778, Sadrul Haq Khan requested Hastings to make some provision for the protection of the servants of the Nizamat from the summonses and warrants of the Supreme Court. For such cases, Hastings advised that an affidavit sworn by the witnesses and corroborated by the Nawab should be furnished to the Council.⁴⁹ But this arrangement does not appear to have given legal protection to the Nawab's servants from the processes of the Supreme Court.

In February 1779, Sadrul Haq Khan complained to Hastings that one Bhawani having obtained a summons of the Supreme Court against Saiyid Ali Khan, Naib Faujdar of Murshidabad, served it on him. Continuing, he said that on a former occasion the Daroga of the Azimabad Adalat was similarly summoned by the Supreme Court and again, a person had once obtained orders from that Court for the transfer of a prisoner to Calcutta. These events, he stated, had caused much consternation among the officials of the Diwani and the Nizamat. The Naib Nazim apprehended that if the Supreme Court continued to pass orders in that way merely for the asking, the vakils and relatives of the criminals would take undue advantage by getting their clients released from the jails and that the administration would thereby be seriously hampered and crime and lawlessness would prevail. He therefore submitted that the practice must be checked and the bonafides of the applications for release or transfer of the prisoners thoroughly investigated.⁵⁰

A most critical situation arose when in 1779, two legal actions

of the Supreme Court, one a civil process and the other a process of contempt served on Sadrul Haq Khan himself, threatened to expose him to the indignity of an ordinary defendant prosecuted before that Court. It is interesting to note that even trivial matters could provide the cause of action against no less a person than the Naib Nazim, in whom was vested the entire judicial power of the country government.⁵¹

In the former case, the civil process had issued upon the usual affidavit of a debt. The affidavit declared the Naib Nazim to be subject to the jurisdiction of the Supreme Court. In the second case, Cojah Zakeriah and others started a case against the Naib Nazim in the Supreme Court for their arrest and imprisonment at Murshidabad. The plaintiffs were apprehended on a charge of forgery and sent down from Patna to Murshidabad to await the decision of the Naib Nazim on the trial they had undergone before the officers of the Faujdari court. But before any judgment was pronounced in this case they were served with subpoenas from the Supreme Court and had to be sent to Calcutta to give evidence in a cause then pending before that Court. Upon their return to Murshidabad, they were remanded to custody. This exercise of authority by the Naib Nazim, though ordinarily proper, was taken by the Supreme Court to be an infringement of that protection to which a witness was entitled *eundo et redeundo*. The Naib Nazim having made no return to the writ of Habeas Corpus which was issued on this occasion commanding him to send up Cojah Zakeriah and others, a process of contempt was ordered against him.

The Council directed the Company's attorney to defend the actions and the Advocate General was advised to "plead to the jurisdiction of the Court," and if that plea was over-ruled, to proceed on the merits of the cause. In his letter of 1 July 1779 Naylor, attorney to the Company, informed that the legal actions were discontinued by the parties.

It also appears that when the writ of Habeas Corpus was served upon the Naib Nazim in January 1779, he fell in a dilemma.⁵² He had cross penalties to encounter for whatever he did. If he disobeyed the summons, a Capias and Sequestration

would follow. On the other hand, a plea to the jurisdiction was dangerous and delusive. To plead, he must appear. If he appeared to plead to the jurisdiction, the oath would dishonour him and bring his authority and that of the Nizamat into discredit with his people. Moreover, were it overruled, an indictment for perjury might be preferred with an ignominious punishment in its train in the event of conviction.

Thus circumstanced and unwilling to openly acknowledge the jurisdiction of the Supreme Court and at the same time to avoid offence, the Naib Nazim desired the Sheriff's officer to leave the writ on a chair in his presence. That officer, however, in his affidavit before the Supreme Court described this incident with such a colouring that the judges took it as an insult to their authority and immediately ordered an attachment to be issued against the Naib Nazim.

The situation was extremely complicated. The Council were of the opinion that in such extraordinary and delicate circumstances, the Supreme Court should have been more respectful to the status of the Naib Nazim and might have relaxed its rule of practice instead of obstinately pursuing it irrespective of the place and circumstances. They wrote, "representing, as he (Naib Nazim) does, what remains of the Majesty of the Empire in these Subahs, and the exercise of his authority being the only present means of preserving peace and order throughout the country, it should, in common policy, till some substitute is provided, be permitted, we think, to remain in all possible vigour and respect."⁵³

Fortunately, the crisis was averted by the Commissioner of Law suits, who stayed the execution of the writ by means of an affidavit that afforded Hastings time to use his influence for preventing the writ from taking effect. On the one hand, he induced the Naib Nazim to write a "letter of concession" to the Chief Justice ; and on the other, the Supreme Court ordered that the writ of attachment should not be issued from the office of the clerk of the Crown before the first day of the next term and until further orders. To the intense relief of all concerned, that notorious writ was never afterwards enforced.

or noticed, though like Damocles' Sword, its dread hung over the head of the Naib Nazim until the hour of his death.

The Nawab and the Naib Nazim had often murmured to Hastings against the continued interposition of the Supreme Court which seemed to seriously challenge—nay ignore—the authority of the Nizamat. Ultimately, Hastings thought it fit to make a survey of the cases complained of. On 20 March 1780, he wrote a letter to Reza Khan to furnish him within three months with a detailed account of the suits instituted in the Supreme Court since October 1775, against the officers of the Nizamat as well as the people of Murshidabad. He was anxious to know whether the Supreme Court interfered with the administration of criminal justice. Accordingly, Reza Khan procured statements from nine different citizens of Murshidabad and submitted them to Hastings. The following accounts would reveal how these people had suffered from the arbitrary orders of the Supreme Court and what expenses they were put to by its warrants.⁵⁴

On 20 September 1777 Shaikh Sanaullah with his two brothers accused Muhammad Ali Beg of murder before the Faujdari Adalat of Dacca. One night the complainants suddenly appeared at Beg's house with 14 sepoys and 200 men and carried off 47 pieces of valuable clothes belonging to him. They also forcibly carried him to the local Faujdar and got him confined for nine days. Thereafter they bribed the Faujdar to compel him to pay a fine of Rs. 1,200. Getting scent of their intention of murdering him, Beg escaped to Murshidabad and made a complaint before Sadrul Haq Khan who could not attend to it owing to serious illness. Beg then proceeded to Calcutta appointed Uvedale as his attorney and lodged a complaint in the Supreme Court. Summonses were then issued against the Faujdar, and his men, and Sanaullah as well as his brothers. Subpoenas were served on his nine witnesses. But all these processes took much time without any actual effect. Inspite of his requests for speedy disposal his attorney, to his utter disappointment, put off the prosecution for a term. As a result his witnesses grew impatient. Being hard pressed by them

and apprehending considerable expenditure in the suit, he dropped the proceedings. He spent Rs. 3,000, without receiving any justice.

Zafar Ali complained against Lutfullah and Riza Quli and got them imprisoned in the zila court of Calcutta. A few days later he ran away to Murshidabad with a slave girl of Mir Muhammad Taqi. The slave was rescued and Zafar Ali was pardoned by Mir Taqi. Shortly after Zafar Ali renewed his complaint against Lutfullah and Riza Quli. Mir Taqi was summoned to attend the court as witness for the defence. To prevent his attendance there, Zafar Ali appealed to the Supreme Court and had two summonses served—one on Mir Taqi at Calcutta and the other on his mother at Murshidabad. Mir Taqi, his mother and Lutfullah having then declared on oath that they were not dependants of the Company, the case terminated. The sum spent in this case was Rs. 3,000 and the period consumed one year.

Aga Muhammad Hamadani gave on 10 April 1775 a piece of diamond to a jeweller for making a pair of imitation. The jeweller lost this diamond which was traced at a shop where a Sikh was offering it for sale. The Sikh was arrested, but he secured release on bail and lodged a false complaint against Hamadani in the Supreme Court. This case cost Hamadani Rs. 2,000 without the recovery of the diamond.

On a complaint made in 1773 by Khwaja Petrus, a jeweller of Calcutta, a summons was served on another jeweller, Mulchand who employed Brix as his attorney and spent not less than Rs. 4,500. Although Petrus subsequently died, the case remained pending for six years till the middle of 1780.

Two persons, Ram Singh and Meha Singh, laid before the Supreme Court claims to the village Munniganj which belonged to their zamindar Hari Singh. Summonses were served on Hari Singh who engaged Uvedale as his attorney, remained in Calcutta for six months and spent Rs. 9,627 in the suit without getting any remedy.

Budhay Ram and Sheolal, merchants of Murshidabad, filed a suit in the Supreme Court against Achal Singh who spent

Rs. 2,000 and yet failed to get the warrant of the Supreme Court revoked.

One Sambhunath lodged a claim in the Supreme Court against Tej Singh, a treasurer of the Nizamat. A warrant was served on Tej Singh who had to spend nearly Rs. 6,000 and was put to excessive trouble.

Zainab, wife of Momin Beg, was appointed by the mother of Mirza Abdullah to collect the money due from her son's debtor, Gaya Chand. For several months Zainab collected the loan by instalments, but hid this fact from Abdullah, who at last grew suspicious and took possession of all his documents from her custody. She thereupon filed a plaint in the Supreme Court. On being asked to pay the amount she had received from Gaya Chand, Zainab excused herself by saying that the money had been entirely spent at that Court.⁵⁵

The well-known Dacca case was narrated in the report of the *vakil* of Saiyid Ali Khan, Faujdar of Dacca. Towards the end of September 1777, the arrogant conduct of Peat, an attorney and Deputy Sheriff of the Supreme Court, brought about a deadlock in the criminal administration of Dacca. But for the prudence exercised by the Dacca Council, it might have caused a direct collision between the Supreme Court and the Nizamat.⁵⁶

Peat came to reside at Dacca about the middle of 1777.⁵⁷ In July a writ of *Habeas Corpus* was issued by the Supreme Court for the removal of one Khiru Paik from the custody of the Faujdari, although he had been arrested for misdemeanour and convicted after a regular trial. Meanwhile, Khiru had been sent to Murshidabad on an expedited order from the Naib Nazim. Somehow or other, Khiru escaped to Calcutta and filed a suit in the Supreme Court against Jagannath, peshkar or deputy of the Faujdar of Dacca for trespass and false imprisonment, whereupon the Supreme Court issued a process of arrest against Jagannath with a bail for Rs. 10,000.

At about noon on 20 September 1777,⁵⁸ Doondy, banyan of Peat, suddenly entered the Diwankhana of Saiyid Ali Khan, Faujdar of the city and rudely asked Jagannath to get up. The

Naib Nazim had previously given instructions to the officers of the Nizamat that they were not subject to the jurisdiction of the Supreme Court. The Faujdar, therefore, told Doondy that the Supreme Court's warrant had no authority over a servant of the Nizamat. But Doondy gave no reply and loudly ordered his men, about a hundred, armed with clubs, to take Jagannath away. Though dragged by the waist, Jagannath managed to escape. About this time, more men were seen coming and the people of the Faujdari apprehending danger shut the doors. These men then began to throw bricks and stones and plundered the outhouses. Peat also arrived and broke open the door and entered the house. Under his orders, his people belaboured the inmates, plundered the goods and assaulted several respectable gentlemen with sticks, spears and swords. Doondy struck the Faujdar's father with a sword and Peat himself fired a pistol at the Faujdar's brother-in-law and seriously wounded him. Last of all, the quarters of the mutasaddis that were behind the Diwankhana were plundered. The incident produced "the greatest consternation imaginable."

Peat's version of the incident was that he had to shoot in self-defence in the midst of the resistance that Jagannath and his men offered against the execution of a warrant of arrest duly issued from the Sheriff's office. He further alleged that Jagannath had contemptuously torn the writ of arrest. On the other hand, Jagannath himself, the Faujdar and every other person present there persistently declared that no writ or warrant was shown to them. The Faujdar pleaded innocence and demanded justice. Until and unless he was afforded redress for what he had suffered, he refused to discharge his functions and said that "he cannot think of going to preside in a court of justice, when he is not safe even in his own house from the officers of the English Court." The result was that the criminal administration at Dacca came to a standstill.

In view of the seriousness of the situation, the Dacca Council wanted to arrive at a settlement with Peat and started negotiations. Jagannath surrendered himself to the Council, but denied the jurisdiction of the Supreme Court and tendered

security to appear, if required, before any of the country courts. But Peat was adamant and would accept no other security than what the writ authorised him. At last, bail bonds were executed by Jagannath and two members of the Council. While signing his bail bond, Jagannath remarked, "I sign this and give this security to prevent disturbance, but as a servant of the Nizamut, I disallow the jurisdiction of the English Court, and deny having seen any writ or knowing till the present time, who was the complainant or what was the cause of complaint."

In order to obviate any further dispute, the Governor-General and Council directed the officers of the Faujdari court that in future whenever any writ would be issued against them, they should submit to them without resistance and give immediate intimation thereof to the Council so that steps might be taken to plead to the jurisdiction of that Court. They were also given assurance that in all cases where suits would be improperly started against them, they would obtain damages, according to the circumstances. At the same time, Naib Nazim was told that this advice was not to be taken as a declaration whatsoever regarding the respective rights or jurisdiction of the Supreme Court or the Nizamat.⁵⁹

In their letter of 24 January 1776, the Directors had expressed their embarrassment over that part of the Council's resolution which committed the administration of criminal justice entirely to the superintendence of Reza Khan. The question whether the jurisdiction of his Faujdari courts would clash with that of the Supreme Court raised such a great problem in their minds, that they left it undecided for the time being. But their apprehension had been borne out by actual conflicts.

True, it was not very often that people took recourse to the Supreme Court against the officers and subjects of the Nawab Nazim. Even so, judging from the Nizamat's standpoint, it was a dangerous proposition for everyone in Bengal, Bihar and Orissa, to be considered subject to the Supreme Court's jurisdiction to the extent that he was bound, if sued in that Court, to appear to plead to the jurisdiction. Moreover, the Supreme Court was empowered to exercise jurisdiction over "any person

employed by, or directly or indirectly in the service of the Company, or any of His Majesty's subjects." Defects of drafting inherent in this clause remained a source of endless complications until the passing of the Act of Parliament of 1781 which clearly defined the jurisdiction of the Supreme Court. The idea that the Nizamat was being put as a cloak to protect criminals obsessed the judges of this Court.⁶⁰ We have already noticed the persistent obduracy with which they endeavoured to obliterate all distinctions between the servants of the Diwani and the Nizamat and between a common defendant and the Naib Nazim of the three Subahs.

Crafty persons all over the three provinces were not slow to take advantage of the processes and pretensions of the Supreme Court. Whenever any such person saw that he had little chance of success in the Mufussal Faujdari Adalats or in the Nizamat Adalat of Murshidabad, he found no initial difficulty in appointing an attorney in Calcutta and lodging a complaint in the Supreme Court against his opponents. Summons or warrants were then issued and subpoenas followed. Much silver flowed from the pockets of litigants to those of attorneys and others. The actual punishment was not important, delay and harassment often being the end in view. The period consumed in a case was never less than a year and often extended to six years or so. Even taking into account any possible exaggeration in the above statements of the citizens of Murshidabad, the fact remains that these proceedings usually led to undue loss of money and unnecessary trouble not only for the accused and their witnesses, but also for the plaintiffs, and above all, to sudden breaks and delays in the regular course of criminal justice, to the detriment of the dignity of the Nizamat.

Thus in its eagerness to do justice to anybody who resorted to it, the Supreme Court virtually screened a criminal from justice being done to him through the regular channel of the criminal court.

The feeble condition of the Nizamat enabled criminals of every description to pursue their careers of crime with a large measure of impunity. Besides the common dacoits, the Maghs,

Sannyasis and the hill-tribes of Jungleterry continued to menace the peace of the country. As a remedy, Hastings made it a point of policy to revive and uphold Mughal institutions of police administration. In 1774 he appointed Faujdars in three districts by way of trial. He held that better plans could not be devised for the satisfaction of the people and their protection from the worst oppression. According to Reza Khan's plan of 1776, the number of police stations was increased to twenty-six thanas and twenty-four chaukis.⁶¹ In 1779 three new thanas and four chaukis were set up and two additional companies of sepoys were raised for the protection of the country.⁶² The zamindars were strongly urged to assist Faujdars in the maintenance of law and order.

Outwardly, the Mughal police structure was preserved. But in reality, form alone was restored and not the substance. Formerly, the Faujdar represented the might of the Nizamat in the parganas. He was furnished with a contingent of 500 to 1,500 sepoys according to the requirement of the area he served. In case of emergency, the Nazim used to send troops under the command of his general to help the Faujdar. Law and order were thus maintained.⁶³

On the other hand, the Faujdar of Reza Khan had ordinarily only twenty sepoys at his disposal, while his thana extended over a space of 80 to 140 miles. With such a small number, crimes could not certainly be suppressed unless the zamindars and farmers fully co-operated with him. But they showed from the very beginning the greatest aversion to the appointment of Faujdars and withheld their support from them.⁶⁴ Far from helping the Faujdars in rounding up the gangs of robbers and tracking down the plundered goods, some of them rather chose to be patrons and abettors of dacoits and other criminals. Faujdar of this period unlike his counterpart of the earlier days could exercise no executive authority over the zamindars and farmers. If a zamindar or his servant neglected his police duty or gave protection to a criminal, the Faujdar could not take any direct step. He was at first to write to the zamindar. If the latter paid no regard to his remonstrance, as it often occurred,

the Faujdar's business was to report his conduct to the Chief of the Provincial Council for remedial measures. In case he got no remedy from the Provincial Council, Faujdar was to report to the Naib Nazim who also could not compel the zamindar to due obedience. However positive the injunctions on the zamindars might appear, they became meaningless in the absence of the power that could enforce them.⁶⁵ All that the Naib Nazim could do in his turn was to forward the petitions of Faujdars to the Governor-General-in-Council and request them to press the zamindars to give all possible help to the Faujdars in suppressing lawlessness, otherwise to authorise him to compel them to do so and give him more sepoys. Sadrul Haq Khan too in September 1779 wrote to Hastings to direct mustajirs, zamindars, jagirdars and altamghadars to give every support to the Faujdar's men in the execution of their duties, for the existing establishment was not strong enough to cope with the criminals unaided.⁶⁶

Mir Zainul Abidin, Faujdar of Rangpur, reported in August 1776 that the zamindari servants did not give him any information about the mofussil. He also described how in a recent scuffle at the Purab Bhag pargana between his sepoys and the dacoits, neither the zamindars nor their men helped the sepoys and as a result his men were worsted and the dacoits escaped. It appeared from his report that these men were cultivators by day and dacoits at night and the zamindar's men were in league with them. The Rangpur Faujdar with his small contingent of sepoys was unable to arrest Fakir Majnu Shah, a formidable dacoit who had a large following. When summoned to give an undertaking for the regular supply of mofussil news, the zamindars and farmers of the Kajirhat pargana pleaded their inability to do so. Also, Ram Prasad, a thanadar in the pargana of Shah Ujiyal, was once seized by the dacoits of Basudebpur and taken to Sultanpur. Despite a great uproar and tumult, the men of zamindars of Chitalia and Damdaha did not at all act in the matter. What the dacoits did with Ram Prasad could not be ascertained.⁶⁷

On 15 May 1779, a gang of robbers attacked and wounded Taylor, an agent of Captain McGowan, killed two of his

attendants and plundered all his effects at Jangipur. From the depositions of several robbers of this gang, it transpired that the act was committed by a body of criminals harboured by Debi Ray, a talukdar of Rajshahi. He was called upon to surrender those people, but to no effect.⁶⁸

In Jessore the repeated orders of the Nawab for the arrest of a turbulent dacoit, Hira Sardar who committed most horrid depredations on ryots, could not be enforced for a long time, because the zamindars in order to screen him always declared him dead. Even after his arrest three hundred men assembled at Khulna for rescuing him.⁶⁹

Zamindars were the natural guardians of rural peace. They received large deductions from the Government rents for the support of paiks and other servants who were expected to co-operate with the Faujdari officers. The appointment and removal of these servants and the payment of their salaries were left to the zamindars who embezzled a great portion of the money. Since full allowances were seldom received, the zamindari servants paid little attention to their work. As a result the peace of the country was menaced at many places by frequent robberies and murders. To check this state of things, Sadrul Haq Khan requested the English Government to place in his hands the direct management of these servants so that the zamindars and others could not interfere at all. The English Government was not prepared to concede so much power to the Naib Nazim and his prayer was not granted.⁷⁰

The Council on some occasions directed the zamindars to produce the culprits and recover the stolen goods, failing which they were made to compensate the loss sustained. But in general, the non-co-operation and hostile attitude of the zamindars rendered the task of maintaining law and order very difficult. As Ghulam Husain puts it, "under the English Government, the principal zemindars being now their own masters ... do now as they please, and in what manner they please The Fodjdar dares not to quarrel with them, and is even afraid to give them an order, or to revenge the oppressed ones upon the tyrants, or even to reclaim from

their hands the property of those travellers whom they had despoiled."⁷¹

The condition of the Faujdari department further deteriorated owing to the negligence of duty and oppressive conduct of some of the Faujdars and their servants. The Faujdari officers of Mirzanagar were reported in May 1775, to have squeezed and maltreated the people on various pretexts.⁷² In January 1779, Hastings wrote to Sadrul Haq Khan that representations had been made to the Council to the effect that the Faujdari officers of Bihar were utterly negligent of their duties so that notorious criminals got off scot-free. The zamindars of Rangpur requested Goodlad to ask the Faujdar to dismiss a head constable (Sardar) who, as it was alleged, confined the ryots on fictitious charges, extorted money from them and held a regular correspondence with dacoits. In support of their allegation, zamindars produced certain intercepted letters of the Sardar in one of which he had informed the dacoits of the warrant issued against them and advised them to remain in hiding until they received further intelligence from him. He also abducted the wife of a poor ryot, accused her husband of dacoity and threw him into prison. The Naib Nazim was directed by Hastings to bring the Sardar to a public trial. Again, in December 1779 Hastings wrote to the Nawab that he had learnt from the Chief and Council at Dacca of the violence practised by Mir Bakhsh Ali, Faujdar of Barisal, in every pargana under his jurisdiction. Cottrell, the Commercial Chief of Dacca, also made several petitions against the misconduct and negligence of the Faujdar of Dacca.⁷³

The inefficiency and oppression of the "pompous" Faujdars of these days, have been severely condemned by the author of *Seir Mutaqherin*, who writes, "whilst the sobs and groans of the oppressed are reaching the very canopy of heaven, these officers (Faujdars) go on approving themselves incapable of performing the business expected from them."⁷⁴

The prestige of the Nizamat had been so much impaired and Faujdars so lowered in the eyes of the people, that they could hardly have their orders obeyed by others. In August

1776, Reza Khan reported that for some time past he had been receiving reports regarding the negligence of pasbans (watchmen), inattention of zamindars and indifference of the district officers. He also forwarded a letter from Zainul Abidin, Faujdar of Rangpur, to show how the Faujdar's orders were disregarded by the Company's servants. On the request of the Chief of the Nawabganj factory Hastings had directed the Rangpur Faujdar to guard it against the attacks of robbers. It was at a distance of two miles from Rangpur and beyond the jurisdiction of Kotwals and pasbans of Rangpur. The Faujdar, therefore, asked the employees of the factory to give him an undertaking for its protection, but they refused to do so. One day in the same year, the sepoys of a Faujdari establishment between Murshidabad and Rajmahal encountered a gang of armed dacoits and gave them chase. The dacoits fled to the interior. The Faujdar's men asked the local people to help them in arresting the offenders but they refused to do so and declared that they had no connection with the Faujdari. Again, when three servants of a farmer of Sasaram were on their way to Azimabad robbed, killed and buried in a hole previously dug for the purpose, the Faujdar was promptly informed but he failed to do anything against the miscreants and excused himself before the Council of Patna on the ground that the accused did not obey his summons to attend the court.⁷⁵ These instances suffice to show to what extent disorder and mismanagement prevailed in the Faujdari administration.

Far from being able to protect the people from the attacks of dacoits, Faujdars were themselves in the greatest need of protection. Fully sensible of the unsubstantial character of the Nizamat, even the most ordinary English agents did not hesitate to insult or even assault them on trifling matters. About the middle of 1776, on hearing of a theft in the house of one Barton, Faujdar of Rangpur sent one of his men in hot haste for investigation. Soon after two servants of Barton came to the Faujdar, reproached and dragged him to their master who asked him to trace the thief. The Faujdar explained his difficulties—the Kotwal did not obey him, nor did the zamindars give him any

assistance. But he would try his best in the matter, he assured. Yet Barton abused the Faujdar in a filthy language. Reza Khan inquired into the incident and was convinced that the insult which the Rangpur Faujdar had been exposed to was most unjustifiable. At about the same period, the Faujdar of Bhagalpur was subjected to a similar insult. Both the cases were reported by Reza Khan in the hope of timely redress.⁷⁶

In September 1777, Reza Khan was constrained to report another incident. Mir Shakarullah, Faujdar of Tirhut, had settled the purchase of a log of wood with Ray Mohanlal, an amil of the Nizamat. On hearing that a servant of Mir Imam Bakhsh, the Company's agent for salt-petre, accompanied by a peon was chopping the wood, Mir Shakarullah informed them of his transaction with Mohanlal. But shortly after Mir Imam Bakhsh himself appeared with thirty or forty men, scattered the bags of saltpetre and began to abuse the Faujdar. When asked not to damage the Government property he turned a deaf ear. Not satisfied yet, Imam Bakhsh came again in the afternoon with four or five hundred armed men, pillaged the Faujdar's court, robbed the treasury, dragged out the Faujdar, assaulted him mercilessly and then took him in an unconscious state to his house on the other side of the river. All the prisoners took this occasion to make off from the court. It was only at the intervention of some local persons that the Faujdar could be brought back to his house. Reza Khan was fully aware of the consequences of such outrageous conduct and defiance of Faujdari authority by an ordinary agent of the Company, but he dared not take any direct measure himself and reported the whole affair to Hastings. Hastings probably took some steps, but what they exactly were, we do not know. Instead of committing such a serious offender to the justice of the criminal court, as might have been expected, the English Government took the matter in their own hands and did not think it necessary to consult even the Naib Nazim.⁷⁷

Hastings' idea of reviving the indigenous system of Faujdars was thus bound to fail, as it did, for want of adequate authority

in the Nizamat. The policy of responsibility without power was wrong *ab initio*.

On 6 April 1781, the Governor-General and Council introduced certain measures for the reform of criminal administration.⁷⁸ The institution of native Faujdars and thanadars which proved unsatisfactory was abolished except in Hugli.

In place of Faujdars and thanadars, the English judges of Diwani courts were invested with powers of arresting criminals within their districts. In their additional capacity, the judges were known as magistrates. They were required to commit the criminals immediately on their apprehension to the Darogas of the nearest Faujdari Adalats along with charges in writing. Thus their new obligation was limited to merely police duties. With the trial and punishment of the criminals, they had nothing to do. They had no authority over the Darogas.

The constitution of the Faujdari Adalats with Naib Nazim as their supervisor remained unaltered. As before, Daroga of the Faujdari Adalat continued to perform his duty of arresting and trying criminals and reporting his proceedings to the Nazim.

Provision was at the same time made for certain zamindars being vested with the power of arrest, subject of course to the special permission of the Governor-General and Council. In such cases, the European judges, Darogas of Faujdari Adalats and the zamindars were to exercise a concurrent jurisdiction over the police functions of the Nizamat.

A co-ordination of their activities was also deemed requisite in order to obviate the risks of a divided control. A central machinery of superintendence was, therefore, set up at Fort William under the immediate control of the Governor-General. A separate department was created with a covenanted servant of the Company in charge, who was designated as the Remembrancer of the criminal courts. For detailed information about criminal administration, this department was to receive monthly reports of the proceedings and lists of prisoners arrested and convicted by the respective authorities throughout the province.

The magistrate and the zamindar were required to submit regularly, on the first day of every Bengali month, separate

and authenticated reports of all persons arrested and sent for trial, together with attested copies of the charges laid against the prisoners. The Faujdari Adalats as well were to be directed by the Nawab to transmit separate monthly reports of all persons committed to them and those discharged together with the copies of decrees and orders of the Nazim passed each month.

The Remembrancer of the criminal courts was to keep these reports, their translations and abstracts duly arranged for ready reference, comparative study and check upon persons employed in the administration of criminal justice.

He was allowed the following monthly salary and establishment :—

	Rs.
Remembrancer (salary, house-rent and all contingencies)	1,000
One assistant	100
One Maulavi	100
One Munshi or copyist	30
	<hr/>
	1,230

The measures of 6 April 1781 strengthened the hands of the English district officers by transferring to them the functions of the native police officers. They instituted a system of divided control in the Faujdari jurisdiction with the Muslim Darogas solely subordinate to the Murshidabad Government, the English magistrates acting under the English Government and the English Remembrancer at Fort William watching over the respective functions of all the three different channels—the Daroga, magistrate and zamindar. Thus, Hastings took a step towards the assumption of the functions of the Nizamat.

On 29 June 1782, Hastings proposed further reforms which were approved by the Council on 5 July and enforced from 1 August next.⁷⁹ The object of these measures was the reduction of the expenses of the Faujdari department.

The abstract accounts of the Faujdari charges during the years 1776-81 revealed that the expense had annually increased.⁸⁰ The annual expenditure proposed by magistrates for the execution

of their Faujdari duties was Rs. 6,39,246 and the amount proposed by Reza Khan for the Faujdari courts was Rs. 3,62,208. Besides, the Faujdari of Hugli cost Rs. 8,472 at the rate of Rs. 706 per mensem. The total expenditure on these three headings amounted to Rs. 10,09,926. The proposed establishments appeared too expensive to the English Government, and were totally rejected. In his eagerness to curtail all "unnecessary" expenses, Hastings thought it fit to form an entirely new set of Faujdari establishments both for the magistrates and for the Adalats.

In forming the new establishments Hastings reverted to those he had formed in 1772-73. He held that nothing further could be added to those establishments except the guards of the jail and the malkhana. He proposed that there should be one Sadr Nizamat Adalat at Murshidabad with eighteen Faujdari Adalats located either at the headquarters of the magistrates or in the neighbouring areas.

There were at that time one Sadr Adalat at Murshidabad and twenty-four Faujdari Adalats.⁸¹ They were very unequally distributed. For instance, the province of Bihar had only one Adalat for the entire area, and it frequently occurred that the accused together with the accusers and their witnesses were sent 120 and even 160 miles for redress, to the manifold vexations of all concerned.

According to the new Regulations, the Faujdari Adalats of seven places—Akbarnagar, Krishnagar, Katwa, Kalighat, Hugli, Hijili and Birbhum (Suri) were abolished and one new court was established at Maissey or Lauriya. The Adalats of five places—Bhusna, Bishnupur, Dinajpur, Purnea and Sylhet were moved to Bakarganj, Rajhat or Raghunathpur, Tajpur, Darbhanga, Azmeriganj or Sultanse respectively. As regards others, no change was made.

The constitution of the Sadr Nizamat Adalat was not altered. Its expenses amounted to Rs. 2,909 per mensem.⁸² The total monthly sum sanctioned for the eighteen Faujdari Adalats was Rs. 8,910 at the rate of Rs. 495 for each.⁸³

The total annual expenditure of these eighteen Faujdari Adalats and the Sadr Nizamat Adalat amounted together to

Rs. 1,41,828 and meant a saving of Rs. 2,20,380 from the proposed establishment of Reza Khan.

To enable the magistrates to discharge their police functions, a separate establishment was assigned to each of them, with the exception of Bhagalpur. There were, therefore, seventeen new magisterial establishments. The amount of their allowances varied between Rs. 240 and Rs. 810. The sum of Rs. 250 was granted to the stations that formed the headquarters of military establishments, with the exception of Calcutta which was allowed Rs. 610.⁸⁴

The police establishment of a magistrate consisted of a nazir, a mirdaha, several barkandazes, peons, muharrirs and others. The number of barkandazes and peons varied from 25 to 150 according to the local requirements. The magistrates enjoying the maximum sum of Rs. 810 employed 150 barkandazes.

The Regulations of 5 July 1782 provided also for a Kotwali establishment for each of the three towns of Murshidabad, Dacca and Patna. Each Kotwali establishment consisted of one Kotwal, certain watchmen (barkandazes and pasbans) and scavengers (doms). The allowance assigned to Murshidabad was Rs. 575; it had to employ 80 barkandazes, while each of the towns of Dacca and Patna was allowed Rs. 425, and had to maintain 60 barkandazes.⁸⁵ Total annual expenditure of the seventeen magisterial establishments and three Kotwali establishments was Rs. 1,08,660.

The establishment proposed for the Faujdari office of Hugli at a cost of Rs. 8,472 per annum was then taken into consideration. The continuance of this office appeared to the Council to be only an unnecessary burden upon Government. Reza Khan was, therefore, directed to abolish it. Its functions were incorporated in the Calcutta magistrate's jurisdiction.

The annual expenditure fixed by the new Regulations for the administration of criminal justice and police was only Rs. 2,50,488, while the average annual expenditure during 1776-81 was Rs. 5,95,125 and the charges for only one session of

1780-81 (corresponding to the Bengali year 1187) rose up to Rs. 8,22,767-4-1.

The annual cost of establishments proposed by the magistrates and Reza Khan amounted together to Rs. 10,09,926, i.e., about four times the amount now fixed. The Council could well feel gratified at the substantial reduction of expenditure that followed.

For "the better enforcement" of their Regulations, the Council thought it necessary to exact in full the services which the zamindars were expected to render for the preservation of peace under the fundamental conditions of their tenure. In a proclamation issued to the zamindars, their attention was drawn to their police obligations and heavy penalties were laid down for failure or negligence in respect of those obligations or for connivance at crimes.

The zamindars were enjoined to set up thanas at the places recommended by the magistrates and they were to be answerable for the good behaviour of the thanadars as also for their immediate compliance with all orders issued to them by the magistrates. In the event of any robbery, they were to be liable to refund the amount robbed of. Finally, whether for disturbance of peace in general, or for specific acts of violence within their areas, the zamindars were to be responsible and punishable even with death, in case of proved connivance or perpetration.

The new Regulations were designed to tighten the control of the Governor-General over the administration of criminal justice and police. The Council directed both Reza Khan and the magistrates, in identical manner, to transmit monthly to the Remembrancer's office their accounts and vouchers. While Reza Khan was to receive payment for his Adalat establishments from the Chief of Murshidabad, the magistrates were to obtain theirs from the Revenue treasury. The Remembrancer of the criminal courts was required to audit the disbursement and submit a monthly report to the Governor-General.

The measures of 5 July 1782 lacked in a correct appraisal of the prevailing conditions. It was already a common knowledge

that much of the activity of the dacoits was the outcome of negligence and connivance or even collaboration of the zamindars. And to those very zamindars Hastings now entrusted "the better enforcement" of his new Faujdari Regulations. The impracticability of saddling police obligations on the zamindars was not duly realised. Moreover, while an average expenditure of Rs. 5,95,125 had failed to meet the requirements of the Faujdari department during the last five years, the Council reduced even that amount by more than half. This policy of rigid economy was bound to tell upon the criminal administration and promote the existing evils.

References

1. Secret Cons., 30 Oct. 1775.
2. *Ibid*, 9 Nov. 1775.

Though outwardly "satisfied" with Reza Khan's appointment, the Nawab issued a Sanad confirming him merely in the office of superintendent of Faujdari Adalats and not in the Naib Subahdari. His plea for this reservation was that this was "not customary" and unprecedented.

3. Secret Cons., 6 Nov. 1775.
4. *Ibid*, 6 Dec. 1775.
5. Salaries of the servants of the Nizamat were scarcely paid with regularity. For instance, Shah Asrarullah, an officer of the Nizamat remained unpaid consecutively for seventeen months. In October 1776 Martin paid him his salary for nine months with effect from the time (December 1775) when Reza Khan had taken charge of the Nizamat. The balance was still due to Shah Asrarullah. (C. P. C., Vol. V, No. 341.)
6. C. P. C., Vol. V, No. 74 ; Progs. of the Calcutta Committee of Revenue, 22 Feb. 1776 ; Progs. of the Murshidabad Council of Revenue, 26 Feb. 1776.
7. *Vide* Home Misc. Vol. 353, Appendix I, pp. 165-227, for a full copy of Reza Khan's Plan.
8. *Vide* (a) Appendix C for an abstract account of the servants and monthly expenditure of the Faujdari Adalats before and after Reza Khan's Plan (1776).

(Home Misc., Vol. 353, App. I, pp. 194-95) ;

(b) Appendix D, for the establishments of Faujdari Adalats before and after Reza Khan's Plan (1776).

(Home Misc., Vol. 353, App. I, pp. 196-207).

Curiously enough, the establishment charge of the Chittpur Faujdari Adalat as recorded in the abstract account (Home Misc., Vol. 353, App. I, pp. 194-95) differs from that of the detailed account (Home

Misc., Vol. 353, App. I, pp. 198-99). Obviously, the detailed account is the correct one and on that presumption, the entries in that account have been accepted.

Previous Establishments. Proposed Establishment.

Abstract

Account. ...	Rs. 24,818	Rs. 813
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Detailed

Account. ...	Rs. 1,481-11-0	Rs. 832-11-0
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9. Thanas in which additional sepoys of the Company were stationed.

Name.	Additional sepoys.
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Calcutta parganas.	40
Pandol	30
Katwa	50
Purnea	40
Hijili	20
Mirzanagar	30
Hugli	20
Ghoraghata	30
Godagari	20
Chapla	30
Jahangiranagar	80
Kustia	20
Samdea	15

Total— 425

10. Monthly expenditure of the central Faujdari office—

	Rs.
1 Sarishtadar	300
1 Peshkar	50
1 Munshi	30
2 Muharrirs	30
11 Mirdaha and peons	47
1 Frash	4
1 Daftarband	4
Paper, ink etc.	20

Total — 485

See Appendix E for an abstract account of the establishments of Faujdari thanas, chaukis and chabutras ("Chubbooteras") proposed by Reza Khan (1776). (Home Misc., Vol. 353, Appendix I, pp. 212-13).

11. Letter from Court, 24 Dec. 1776; C.P.C., Vol. V, No. 607.

12. C. P. C., Vol. V, No. 425.

13. Received by the Governor-General on 25 Aug., 30 Aug., 3 Sept. and 17 Nov. in 1777. See Fifth Report from the Select Committee, 1782, Appendix 6, (S)—(V); C. P. C., Vol. V, Nos. 621, 626, 633, 725.

Munni Begum too represented her case to Hastings through Lala Manik Chand. (C.P.C., Vol. V, Nos. 830, 886).

14. Hastings' opponent "Aglos" commented that this letter was "notoriously fabricated at Calcutta". See A state of the British Authority in Bengal under the Government of Mr. Hastings etc., London, 1780.

15. Secret. Cons., 23 Feb. 1778 ; Secret Letter from Bengal, 20 March 1778.

16. Secret Cons., 2 March 1778.

17. On a former occasion, with a different object in view (*i.e.* recording his dissent against Reza Khan's appointment in 1775), Hastings himself had not hesitated to declare, "All the arts of policy cannot conceal the power by which these provinces are ruled, nor can all the arts of sophistry avail to transfer the responsibility of them to the Nabob, when it is as visible as the light of the sun that they originate from our own Government, that the Nabob is a mere pageant without so much as the shadow of authority". (Secret Cons., 7 Dec. 1775).

Well might the Directors observe, "no circumstance has happened since that declaration was made to render the Nabob more independent, nor to give him any additional degree of power or consequence." (Letter from Court, 4 Feb. 1779).

18. Secret Cons., 5 March 1778 ; Secret Letter to Court, 20 March 1778.

19. Letter to Francis Sykes, 23 April 1778 (Gleig, *op.cit.*, Vol. II, pp. 189-92).

20. C.P.C., Vol. V, Nos. 831-33, 841.

21. C.P.C., Vol. V, 902, 915-16, 923 ; Secret Cons., 4 May, 11 May, 1778 ; Secret letter to Court, 25 May 1778.

Francis pertinently criticised the gross contradiction in first removing Reza Khan on pretence of the Nawab's executing the several offices himself and immediately afterwards appointing other persons to those very offices and at the same time giving a considerable portion of the salary to the old Begums who already enjoyed ample allowances from the Nawab's stipend. He observed that if Naibs were necessary, the reason for removing Reza Khan was used only as a pretence.

22. C. P. C., Vol. V, Nos. 966-67.

23. *Ibid.*, Nos. 1068-69.

Niabat—office of a Naib, or deputyship.

Qaza—administration of justice, office of the Qazi.

Ifta—post of a law-officer.

24. Received on 3 Sept. 1778. *Vide* Fifth Report from the Select Committee, 1782, Appendix 6 (E.A.).

25. *See*, Vol. III, p. 91. "Aglos" in his pamphlet styled Sadrul Haq Khan as "a poor superannuated dependant of Mr. Hastings."

26. "Their view is", Sadrul Haq Khan added, "that by compelling

me to displeasure at such unworthy treatment, they may force me either to relinquish my station, or to join with them and act by their advice, and appoint creatures of their recommendations to the different offices from which they might draw profit to themselves." (For an extract of this letter see Pub. Cons., 15 Dec. 1779 ; Fifth Report from the Select Committee, 1782, Appendix 6—(E.A.).

27. C. P. C., Vol. V, Nos. 1063, 1066, 1070 ; Pub. Cons., 15 Dec. 1779 ; Fifth Report from the Select Committee, 1782, Appendix 6 (E.A.).
28. C. P. C., Vol. V, Nos. 1071-75.
29. *Ibid*, Nos. 1098, 1103, 1120.
30. *Ibid*, Nos. 1131-1133 ; Pub. Cons., 15 Dec., 1779.

Among other things, Sadrul Haq Khan complained that before his arrival Itbar Ali Khan had made the Nawab sign the receipts and himself misappropriated the salaries of the Nizamat officers and afterwards laid undue pressure on the Naib to extort money from him on irregular pretexts.

31. C.P.C., Vol V, Nos. 1185-86.
32. *Ibid*, Nos. 1120, 1188, 1203-4, 1236.
33. *Ibid*, No. 1680.
34. General Letter from Court, 4 Feb. 1779 ; Pub. Cons., 22 Nov., 23 Nov., 1779.

It can be noted on the authority of Ghulam Husain that just after Sadrul Haq Khan's death, Munni Begum, the Nawab as also Hastings made an attempt to prevent Reza Khan's restoration by offering twice the office of Naib Nazim to a veteran noble man—Ali Ibrahim Khan. It is stated that this offer was rejected primarily for dissensions within the Council and outside, as also for the difficulty of accommodating with the English gentlemen "who governed absolutely in every department." He had, according to Ghulam Husain, "certain disinclination against the office of Fodjdari as it stood then and which in fact consisted of little else than a discharge of a Cutwal's office, in fining and killing and hanging and maiming and in imprisoning and confining people." (*Seir*, Vol. III, pp. 103-105).

35. General Letter from Court, 27 May 1779.

It may be noted that the Court's letter of 4 February 1779 was perfectly in line with Francis' arguments.

36. C.P.C., Vol. V, Nos. 1677-78.

The Court's letter was first considered on 22 November. Barwell was absent and others resolved that a copy of the Company's orders for the immediate re-instatement of Reza Khan as Naib Nazim be transmitted to the Nawab and Reza Khan with a requisition on the part of the Council to the Nawab to conform to this injunction.

But the next day, that resolution was reversed by Barwell's vote. The Court's orders were simply communicated to the Nawab and Reza Khan. (Pub. Cons., 22 Nov., 23 Nov., 1779).

37. Pub. Cons., 15 Dec. 1779 ; General Letter to Court, 14 Jan. 1780, C.P.C., Vol. V, Nos. 1733, 1736.

The Council referred this letter for the Court's attentive perusal.

Francis bitterly criticised the stubbornness shown by the Nawab on this issue. "The Company's orders", he remarked, "are disobeyed on pretended principles, which suppose the existence of an authority in these provinces, independent of the authority of Great Britain over them. That of the Court of Directors is the only medium by which the subjection of Bengal to Great Britain is held and secured. In opposition to it, the Nabob declares, that he acts by his own authority, and shall continue to do so. I do not know what name the Law will give the disobedience of the Company's lawful orders by this Board."

38. Pub. Cons., 24 Feb., 23 March, 1780 ; General Letter to Court, 3 March 1780 ; C.P.C., Vol. V, Nos. 1754, 1765.

On a piteous appeal from the Nawab, the Council divested Reza Khan in July 1781, of the charge of the Nawab's stipend and household and left them to his own management. (Secret Cons., 6 July 1781).

39. C.P.C., Vol. V, No. 213.

40. *Ibid*, No. 1499.

41. *Ibid*, No. 1543.

42. *Ibid*, No. 1495.

43. *Ibid*, No. 1519.

44. C.P.C., Vol. IV, 2009, 2067 ; *ibid*, Vol. V, Nos. 35, 74, 76, 78, 92-93, 99, 131, 133, 174 ; Selections from the notebooks of Justice John Hyde, I, (*Bengal : Past and Present*, Vol. III, p.31.)

45. When examined by the Select Committee of the House of Commons in 1781, Rous, a member of that Committee and formerly chief of the Provincial Council at Dacca, stated that the officers acting in the Faujdari courts were considered throughout the country as a part of the system of judicature established by the English Government "who acted as the sovereign power of the country."

(Report from the Select Committee, 1781, p. 27).

46. In his letter to Lord Weymouth, dated 20 January 1776, Impey wrote, "We should be guilty of a breach of duty, and of oaths, should we solemnly and judicially determine him (Nawab) to be the acting ruling sovereign of this Province." Of the three puisne judges, Hyde and Lemaistre were of the same view, while the third—Sir Chambers was not "unnecessarily" prepared to decide upon this issue of sovereignty, on the ground that the Parliament itself cautiously avoided this question.

47. C. P. C., Vol. V, Nos. 5, 22 ; Secret Cons, 4 Jan., 8 Jan., 1776 ; Secret Letter to Court, 15 Jan. 1776 ; Report from the Select Committee, 1781, Appendix 3, Enclosure 5.

Hastings did not concur with this answer, "because", he argued, "although it does not in direct terms advise the Nabob to oppose the execution

of the Warrant, the expression was so near to that meaning that I am convinced that the Nabob will so construe it, nor can it easily admit of any other construction". He held that Taji Ray and Hinganlal were "in every sense legal objects of the jurisdiction of the Court" (Secret Cons, 8 Jan. 1776).

In their letter of 15 January 1776, the Council pointed out the anomaly involved in the instructions of the Directors in supporting the "rights" of the Nazim as against the opinions of the Supreme Court judges disowning his sovereignty.

48. C.P.C., Vol. V, No. 788.

49. *Ibid*, Nos. 1075, 1098.

50. C.P.C., Vol. V, No. 1367.

51. Letter to Court, 25 Jan. 1780 ; Report from the Select Committee, 1781, pp. 68-69. In May 1775 Goring informed the Council that one Mulchand, a jeweller had lodged in the Supreme Court a complaint of debt against the Nawab himself. Somehow or other, no action appears to have been taken on the matter. (Secret Cons, 25 May 1775).

52. Report from the Select Committee, 1781, p.68.

On 16 October 1778, Hastings received two letters from the Nawab and Naib Nazim to the effect that the Supreme Court had issued a summons against the latter and with a request to prevail upon the judges to revoke the summons. (C.P.C., Vol. V, Nos. 1153-54).

It is not clear if this summons was issued in connection with this very case or otherwise.

53. Letter to Court, 25 Jan. 1780.

The Council pointed out that the powers of the Naib Nazim as the chief criminal magistrate of the province were not abridged by the statute and "being thus tolerated" were "legalised".

They went the length of asserting "Not owing allegiance to the King nor obedience to his laws ; deriving no benefit or security whatever in life or member, in fame, liberty, or fortune, from the administration of justice under those laws he claims, we conceive of right, as thorough an exemption from the control of our laws, as nature has given him an alienage from us in blood, temper and complexion."

54. C.P.C., Vol. V, Nos. 1783, 1810, 1931-32.

55. See C.P.C., Vol. V, No. 1932, for the statements of Muhammad Ali Beg, Mir Muhammad Taqi, Aga Muhammad Hamadani, Mulchand Chaudhuri, Hari Singh, Achal Singh, Tej Singh, Mirza Abdullah and Gulab Singh.

56. Report from the Select Committee, 1781, pp. 22-29, Dacca Appendix, Nos. 6-11 ; C.P.C., Vol. V, No. 1932 ; I. B. Banerji, *the Supreme Court in Conflict*, pp. 179-225.

57. Contrary to the Statute of Henry the Fifth which enacted that "an undersheriff cannot execute that office and practise as an Attorney at the same time," Peat acted in three different capacities, namely, as

an attorney of the Supreme Court, a Master in Chancery and a Deputy Sheriff.

58. Dacca Appendix, No. 6. This date is wrongly stated as 19 October 1775 in the Calendar of Persian Correspondence (Vol. V, No. 1932).

59. The Parliamentary Committee of 1781 admitted ignorance as to the sequel. It appears from the statement of Vakil Gulab Sing that Peat deputed his banyan to lodge a complaint against his opponents. Jagannath also together with the father of the Faujdar and his witnesses went there to file a suit against Peat and his men. Although the contending parties were later on brought to an amicable settlement, the case cost the Faujdar the sum of Rs. 14,446.

60. The Supreme Court had once proclaimed that "neither the East India Company nor their servants, both being subject to the Laws of the King of Great Britain can, by interposing the name of the Nabob, screen any criminal from the justice of the Court." (Letter to Court, 15 Jan. 1716, para. 32).

61. Rev. Cons., 19 Apr. 1774 ; Home Misc., Vol. 353, Appendix I, p. 176.

62. Rev. Cons., 29 June 1779 ; C. P. C., Vol. V, No. 1542.

The new thanas were one each at Sylhet, Aurangabad, Silbaris and the chaukis at Mahirpur, Jalangi, Muhammad Aminpur and Shahbazpur.

63. *Seir*, Vol. III, pp. 178-89.

64. Rev. Cons., 29 May 1775.

65. Home Misc., Vol. 353, Appendix I, pp. 179-86.

Reza Khan might well quote Rous, Supervisor of Nator, and say, "Injunction without control I conceive to be incompatible." Vide Letter Copy Book of the Supervisor of Rajshahi at Nator, p. 34 (from Rous to Becher, 1 Aug. 1771).

66. C.P.C., Vol. V, Nos. 238, 245, 420, 422, 817, 1587.

Mustajir—a farmer, a renter.

Altamghadar—holder of royal grant in perpetuity.

67. *Ibid.*, Nos. 238, 422.

68. *Ibid.*, No. 1925.

69. Westland—*A Report on the District of Jessore*, p. 60.

All measures to reduce Fateh Sahi, the rebellious zamindar of Husepur, proved ineffectual, for he received protection from the zamindars of Pandrauna, Majhaul and Bankjogni. See Progs. C.C.R., Patna, 27 April 1772 ; 4 March, 29 July, 12 Aug., 1773 and C.P.C., Vol. VI, Nos. 83 543.

70. Rev. Cons., 29 June 1779.

71. C. P. C., Vol. V, Nos. 312-13, 371, and Vol. VI, No. 514 ; *Seir*, Vol. III, p. 181.

72. Rev. Cons., 16 May 1775.

73. C.P.C., Vol. V, No. 1320, 1498, 1692, 1711, 1788 and Vol. VI, No. 102.

74. *Seir*, Vol. III, p. 182. ".....the Fodjdari office", he further observes, "originally set up for the care of the subject, has been perverted into a scene of extortion and tyranny." (*Seir*, Vol. III, p. 193).

75. C.P.C., Vol. V, Nos. 269-70, 422, 1320.

76. *Ibid*, Nos. 256, 266.

77. *Ibid*, Nos. 655, 692; Pub. Cons., 22 Sept. 1777.

78. Rev. Cons., I.O. Copies, 6 April 1781.

79. Rev. Cons., 5 July 1782.

80. Abstract accounts of the Faujdari charges, 1776-81 :—

Bengali year.	English year.	Faujdari charges. Rs.
1183	1776/7	4,68,479- 3-0
1184	1777/8	5,11,956-13- 0-3
1185	1778/9	5,84,022- 0-16-1
1186	1779/80	5,88,402-13-10-0
1187	1780/81	8,22,767- 4- 1-2

81. The twenty-four faujdari Adalats were stationed one in each of the following places :

- | | |
|-----------------------|---------------------------|
| 1. Murshidabad | 13. Birbhum (Suri) |
| 2. Bhaturia (Chapla) | 14. Bishnupur (Indas) |
| 3. Bhusna | 15. Midnapur |
| 4. Akbarnagar | 16. Dinajpur |
| 5. Krishnagar | 17. Rangpur |
| 6. Katwa | 18. Purnea |
| 7. Calcutta (Chitpur) | 19. Jahangirnagar (Dacca) |
| 8. Kalighat | 20. Sylhet |
| 9. Hugli | 21. Islamabad |
| 10. Hijili | 22. Bhagalpur |
| 11. Jessor (Murli) | 23. Ramgarh (Chittra) |
| 12. Burdwan | 24. Azimabad (Patna) |

82. Monthly establishment of the Sadr Nizamat Adalat :—

Servants.	Wages. Rs.
1 Daroga	900
1 Head Qazi	650
1 Mufti	350
3 Maulavis at Rs. 200 each.	600
1 Munshi	80
1 Sarishtadar	80
4 Muharirs at Rs. 30 each.	120
Daftar-band etc. and other charges.	129

83. The sum of Rs. 495 was distributed in the following manner :—

	Rs.		Rs.
1 Daroga	100	B.F.	435
1 Qazi	65		
1 Naib Qazi	35	1 "Tabbob"	20
2 Munshis	60	1 Brahmin	10
2 Muhammirs	40	1 Tazianabardar	4
1 Mirdaha	25	1 Jallad	4
1 Naib	10	1 "Gorcan"	4
30 Barkandazes	90	1 Farash.	4
1 Mollah	10	Miscellaneous.	14
	435		Total 495

84. An abstract account of the monthly allowances assigned to these seventeen establishments :—

Name.	Allowance.	Name.	Allowance.
	Rs.		Rs.
1. Azmeriganj	810	B.F.	4170
2. Bakarganj	810	10. Midnapur	475
3. Burdwan	250	11. Murli	810
4. Calcutta	610	12. Murshidabad	250
5. Chittra	240	13. Nator	475
6. Dacca	250	14. Patna	250
7. Darbhanga	475	15. Rajhat	475
8. Islamabad	250	16. Rangpur	250
9. Maissey	475	17. Tajpur	475
	4170		Total 7630

85. Kotwali establishments—

		Monthly wages.
		Rs.
(a) Murshidabad—		1 Kotwal
		45
80 Barkandazes		320
40 Pasbans		140
20 Doms		70
		575
(b) Dacca—		1 Kotwal.
		45
60 Barkandazes		240
30 Pasbans.		105
10 Doms		35
		425
(c) Patna —Ditto—		425
		Total. Rs. 1425

CHAPTER VI

CRIMINAL ADMINISTRATION : 1782-1787.

The decade succeeding 1772 witnessed a slow transition in the criminal administration of Bengal. The political balance had long shifted towards the Company and this virtually negatived the policy which still put forth the criminal administration as the exclusive jurisdiction of the Nawab's government.

The amendments proposed by Hastings in 1773 for the rationalisation of the Muslim penal law did not materialise. In fact, no substantial change in that direction was possible so long as the responsibility of implementing it vested constitutionally in the Naib Nazim who lacked power and means equal to his responsibility. And even that power was circumscribed by considerations of religion.

On 13 January 1782, Shore gave Macpherson a confidential memorial. From his thirteen years' residence in Bengal Shore had come to form some clear views about the mode of collecting the revenues, the administration of justice and the character of the people of Bengal.¹

The criminal administration of Bengal was in his opinion "a mere system of rapine and plunder" and furnished a "proof against leaving the natives with uncontrouled power." For Reza Khan, however, Shore had much appreciation. Reza Khan was the only person he knew in the country qualified for the office of Naib Nazim. "If he were," said Shore, "left to himself, I have not a doubt but he would conduct it well, but he is so circumscribed by recommendations of particular persons and by the protection held out to his officers by Europeans, that to my knowledge he has not been able to punish them, even when they have been convicted of the greatest enormity, and he has often on this account been blamed, where his hands were tied up."²

Shore had no objection to leaving judicial functions to the Indian officers, solely subordinate to the Naib Nazim. His recommendations were for the alteration of particular punishments, such as impalement and mutilation and for the imposition of a check upon the Faujdari officers in the different districts, by assigning a controlling power to the collectors.

The Governor-General and Council had long taken upon themselves the task of supervising the administration of criminal justice and police. During the years that immediately followed Reza Khan's reinstatement in 1775, Hastings generally forwarded all complaints to the Naib Nazim for a thorough enquiry and impartial justice. But as years went by and disorders did not abate, it was thought necessary to exercise a greater control over the Nawab's administration. The office of the Remembrancer served to bring to light more details about the districts and also more irregularities. So it would often happen that Hastings had to withhold the execution of Reza Khan's decrees till the scrutiny and approval of the Council.

Hastings requested Reza Khan, on 7 June 1782, to send copies of the proceedings of the trials of Narayan Sing, zamindar of Siris, and the persons arrested by Lieut. Polhill. He was asked to indicate the orders passed in each case and directed not to issue warrants for the execution of the sentences till the Council had gone through the proceedings.³ A week later, another letter was written informing Reza Khan that he was not to take cognizance of any offence which might be committed by the hill people living in the jurisdiction of Cleveland, collector of Bhagalpur. The Council had decided that these people should be tried by their own chiefs under the direct superintendence of the collector. All such persons were, therefore, required to be immediately delivered to Cleveland.⁴

The Jagannathpur dacoity case had to be retried under the orders of the Council. A most daring robbery was committed in 1783 in the Company's factory at Jagannathpur near Malda. Charles Grant, Resident at Malda, arrested the principal culprits and sent them for trial to the Faujdari Adalat

of Tajpur. On 2 June 1783, Hastings wrote to Reza Khan to transmit the proceedings of the court immediately after the conclusion of the trial and to hold the sentences in abeyance until the papers had been finally examined and approved by the Governor-General himself.⁵

A year later Davis, Remembrancer of the criminal courts, drew the attention of the Council to certain palpable irregularities in the trial before both the Daroga of Tajpur and Reza Khan. At first, most of the prisoners had confessed their guilt and named some others as their accomplices. But there was a minute and circumstantial agreement in the confessions of these persons, although examined separately and at different times. From the time of the recording of confessions in customary form to the day of trial, a considerable interval elapsed and when the parties were produced in the court, all of them persisted in disavowing the entire confession and declaring that it had been extorted by force or threat of torture. They affirmed that they themselves and the persons they had implicated as accomplices were innocent of the robbery and ignorant about its perpetrators. This plea of coercion was partially supported by evidence of the methods used for obtaining the confessions. This evidence received such credit with the Faujdari officers of Tajpur that the sentences passed by them as confirmed by the Naib Nazim amounted almost to acquittal. No investigation was made into the many corroborating circumstances that had come to light in tracing the robbers. At the instance of Wheler, the acting Governor-General, the Council wrote a letter to the Naib Nazim communicating their opinion that the proceedings of the Faujdari court of Tajpur appeared irregular and unsatisfactory and that many circumstances material to discovery of the truth had escaped enquiry. The Naib Nazim was directed, therefore, to order a retrial of the case at Jagannathpur and to commission one or more qualified persons to undertake the trial. He was also desired to arrest the ringleaders and to send to the Council a copy of the sentence, as soon as it was passed. Orders of release,

if any, were not to be given effect to, without their approval.⁶

Early in 1783, the extensive chakla of Sylhet was left without any court of justice. Mir Ibrahim, Daroga of the Faujdari Adalat, was dismissed. The Adalat was removed to Sultan Ushun (Sultanse) in the pargana of Taraf, which was three days' journey from Sylhet. The consequent inconveniences of the people were represented to the Council by Lindsay, collector of Sylhet. He also forwarded the petitions of the inhabitants and zamindars of the district. They narrated how in the absence of any one to take cognizance of acts of oppression, crimes were daily committed with impunity. They prayed to the English Government for the re-establishment of both civil and criminal courts. Lindsay gave a favourable report on Mir Ibrahim's general conduct and efficiency and alleged that after ten years of honest service, he had been dismissed only on account of his impartiality towards the Hindus. Reza Khan was directed by the Council to reinstate Mir Ibrahim. He stated in reply that Mir Ibrahim had been dismissed on account of negligence of duty and insubordination and not for his catholicity during the riot and that he had failed to submit reports of his work and the proceedings of his Adalat despite repeated orders and warnings. Nevertheless, Reza Khan could not afford to disobey the English Government and Mir Ibrahim was immediately re-appointed.⁷

The Faujdari Regulations of 1781-82 required many amendments. Reza Khan experienced much practical difficulty, but could not himself alter the existing arrangements. In a memorandum in January 1783, he therefore, suggested the following changes for the Council's approbation.

The number and salaries of the Darogas provided in the new plan were considered reducible without much inconvenience. In certain places, a Maulavi with some munshis and writers to assist him would be able to carry on the work of the Daroga. A sarishta (record office) with a sarish-tadar, a few munshis and a tahvildar (cashier) was required

for the maintenance of the records of the services, appointments and dismissals of the officers of the Faujdari Adalats ; but no such department was provided in the new scheme.

The services of four munshis, two copyists, a hundred sepoys, and also a contingent of one dafadar (police officer) and fifty harkaras (peons) were essential for the business of the Faujdari Adalats. A capable Daroga with a suitable salary was required at each of the cities of Murshidabad, Patna, Dacca and Calcutta.

It did not seem possible to shift the Faujdari Adalats from their present locations to the neighbourhood of the Diwani Adalats until a prison and a separate building to house the Adalat were built at each place. Reza Khan suggested that every month a small sum might be allowed for the subsistence of the prisoners. A complete account of the expenses on this head would be duly submitted to the Governor-General at the end of each month for his approval. In the new scheme the wages of a barkandaz were fixed at Rs. 3, but in his opinion the men in Calcutta and Murshidabad deserved a better pay. Provision was also necessary for stationery and oil to be used in the 'Ekjai Sarishta' where the accounts, sanads and records of the appointment and dismissal of officers were kept.

In accordance with the new plan the services of the officers of the Faujdari Adalats at Nadia and Dinajpur were dispensed with and the cases in their files transferred to the officers of Jessor and Purnea respectively. But these officers, owing to excess of work, were unable to take up the extra cases. So Reza Khan thought it desirable to reinstate the retrenched officers. For the time being no action was, however, taken on these proposals.⁸

The Regulations of 1781 required detailed reports to be presented monthly to the European magistrate at each station and to the office of the Remembrancer. The purpose of the office of Remembrancer could be best achieved by the regularity and attention with which the registers of the Darogas' proceedings were procured and received. In practice, however, the time fixed for their delivery was

scarcely adhered to. Although the Council were satisfied with the efficacy of the established Faujdari regulations, the Naib Nazim did not subscribe to their view. In reply to the repeated remonstrances of the Remembrancer over the delay in the transit of Faujdari reports he pleaded the insufficiency of his establishments and proposed substantial additions thereto. The Council also gradually came to realise that the prevailing irregularities should not be allowed to continue. So on 29 June 1784, they accepted most of Reza Khan's proposals and sanctioned a monthly increase of Rs. 570 to his Faujdari establishments.⁹ The total monthly Faujdari expenditure was, therefore, raised from Rs. 11,819 to Rs. 12,389. It is to be noted that these proposals were similar to those made in January 1783, which were not then complied with.

For the Sadr Nizamat Adalat, Reza Khan urged the necessity of the following officers :—(a) a sarishtadar, a few muharrirs and tahvildars for the maintenance of the accounts of the Faujdari stations ; (b) some munshis for writing parwanas, hukums (orders), and other miscellaneous business ; (c) at least 100 sepoys for conducting prisoners from the mofussil courts to the Sadr Nizamat Adalat and *vice versa* ; (d) a dafadar and fifty harkaras to convey the various orders and papers between the mofussil and Sadr Adalats. Provision for sundry unavoidable expenses, *i.e.*, the charges for paper, lights, letters, conveyance of prisoners and pay of amins was also wanted. Again in the existing establishment the salaries of the Daroga and the rest of the officers were separately specified. The service of a Maulavi, however, appeared to be necessary and this could be provided for out of savings made by reducing a few officers. As regards this suggestion, Reza Khan was asked to submit his plan for the approbation of the Governor-General. Of all these proposals, only one was entirely rejected and this was his request for 100 sepoys. This service, in the opinion of the Council, might be done by militia sepoys or by the Faujdari barkandazes. Though the number of the proposed staff

was not totally accepted, this time the Council sanctioned a monthly enhancement of Rs. 410.¹⁰

For the four great cities of Murshidabad, Patna, Dacca and Calcutta, certain increase in the number of servants and salaries of the Darogas was recommended by the Naib Nazim. In view of the preponderance of the Faujdari business in these cities, the Council permitted an increase of Rs. 40, Rs. 20 for a Daroga and the remainder for one muharir, thus raising the expenditure at each of these four stations from Rs. 495 to Rs. 535. The occasion afforded an opportunity to the Council to advise the Naib Nazim to exercise his entire authority for the enforcement of a punctual and just discharge of the duties by his officers.

Although the ultimate responsibility of penal administration lay on Reza Khan, it was physically impossible for him to go through even a small number of cases referred to him. Decrees of Faujdari courts were seldom reversed by him. Life and death of individuals thus virtually depended on their decisions. It was essential, therefore, that men of approved merit should hold the offices of Faujdari Darogas. They should be possessed not only of natural talents, but also of considerable erudition in the Persian and Arabic languages as also in the intricacies of Islamic Law. That this degree of attainment had for some time past been much on the decline, could not but escape the discerning view of Hastings. He could trace certain reasons too. After the management of the revenue had been taken into English hands, it was chiefly carried by the English servants of the Company and by Hindus who "from their education and habits of diligence and frugality" possessed "great advantages over Mahomedans in conducting all affairs of Finance and Accounts."

In consequence of this change, the Mahomedan families gradually lost the power and means of patronising public seminaries of learning and of giving their sons the education which might qualify them for responsible and lucrative offices of the state. "The Phouzdarry Department", observed Hastings, "which affords but a bare subsistence to the officers

employed in it, neither possesses the means of encouraging, nor holds out a prospect capable of inducing the sons of the once respectable, but now decayed and impoverished Mahometan families to qualify themselves for succeeding to the duties of it by a long and laborious course of study." In his eagerness to give opportunities of education to the prospective Darogas, Qazis and munshis, Hastings established a Madrasa—the earliest educational institution of the Company for the native people. The immediate circumstances that led to its foundation were as follows : on 21 September 1780, a large number of Muslims of "credit and learning" waited upon Hastings and presented a petition praying that Maulavi Majdud Din who had lately come to Bengal from Upper India and was known to be an erudite scholar and skilful teacher, be persuaded to settle down in Calcutta for the instruction of the young students in the Muslim law and other sciences.

In the days of former Nazims of Murshidabad, there existed two Madrasas, one in Motijhil and the other in Mansurganj. Now that Murshidabad and its neighbouring cities had become subordinate to Calcutta, it was essential, the petitioners pleaded, that Calcutta should have a decent Madrasa. Such an institution was particularly necessary for training candidates for the offices of judges in the criminal, and assessors in the civil courts.

Hastings, thereupon, sent for Majdud Din and prevailed upon him to accept the office meant for him. He opened his school at the beginning of October 1780. With the earnestness of a reformer that he was, Hastings paid the expenses of the school from his own private purse. When in April 1781, Hastings brought to the notice of the Council the measures adopted by him for this nursery of the Muslim law-officers and proposed that the Government should take over the support of the Madrasa, the Council approved his proposals and recommended them to the Court of Directors. The Madrasa at that time contained 40 boarders. The day scholars paid nothing.¹¹ But no assignment from the public revenue for the maintenance of the Madrasa was

ordered till 3 June 1782, when at the instance of Hastings the Committee of Revenue directed the appropriation of the rents of the lands in certain mouzas in the Twenty-four parganas for the future maintenance of the Madrasa. These lands were placed under the direct management of the collector of the Twenty-four Parganas. In his minute of 21 January 1785, Hastings proposed some other measures for the maintenance of the Madrasa and these were accepted by the Council. About the same time a letter was written to the Naib Nazim directing him to appoint the deserving students of the Calcutta Madrasa who could produce certificates of qualification whenever vacancies occurred in the Faujdari Adalats.¹²

But the Calcutta Madrasa could not naturally enlighten the whole community of law-officers. In his letter of 17 September 1785, G. Shee, magistrate of Dacca, observed, "A hope cannot indeed be entertained that men indiscriminately taken from among the idle and dissipated dependants on the Moorshedabad Court, indigent and most probably avaricious, will not consult their interest in passing decrees and that many of them in doing so are influenced by shameful and bare faced corruption is a fact of too great notoriety to need a detail of particular instances to prove."

The numerous acts of atrocity committed in the neighbourhood of Dacca were attributed by Shee to the ineffectual arrangement for their prevention. He forewarned that such evils unless prevented, would before long become serious to an alarming degree. A magistrate's duty was merely to apprehend criminals. But their apprehension was of little avail, unless exemplary punishments followed conviction and until the existing mode of trial was revised. One serious defect, remarked the Dacca magistrate, of the criminal administration of his district was "the shameful inattention" of Reza Khan to the choice of Darogas for the Faujdari courts. He proposed that the magistrates should be authorised to enquire into the conduct of Darogas and to make a requisition to Reza Khan to remove the guilty Darogas, whenever such enquiries revealed corruption. Shee even suggested

a substantial reduction of the authority of the Naib Nazim and recommended that in future the selection of the Faujdari officers should be made on the basis of primary nomination by Reza Khan and the final approval of the Council.¹⁸

In 1785 one Gholam Ashruff was committed to the Faujdari jail of Chitpur. His trial is significant from various points of view. An inhabitant of Pandua in Hugli, Gholam Ashruff acted as a vakil of the Faujdar of Hijili and early in 1782, came to be suspected of having obtained a large amount of money from the Company's treasury at Hugli and Calcutta by means of certain false receipts called Faujdari kubzes forged in the name of Reza Khan. These kubzes were the drafts which the Naib Nazim gave to several officers of the criminal courts towards their salaries and disbursements. Towards the end of April 1782 the Calcutta Committee of Revenue ordered Lindsay, collector of Sylhet, to apprehend Gholam Ashruff. A notification also was issued for the above purpose. It appears that he was at first placed in the custody of the thanadar of Pandua, and Hawaladar Amanullah was deputed on 24 July to bring him immediately to Calcutta. Willes, Remembrancer of the criminal courts, was ordered to investigate the grounds of suspicion. In the course of the examination Gholam Ashruff accused Prankissen Sing, Naib of the Diwan of the Committee of Revenue, of complicity in the crime. All the circumstances of the charge were examined by Willes. He confirmed in his report the suspicion against Gholam Ashruff but entirely absolved Prankissen Sing. Meanwhile, a man named Barkatullah and five others were suspected of having been involved in similar offences. They also were apprehended and after a long examination before the Committee of Revenue committed for trial and confined in the khalsa.

By an order of Hastings, Gholam Ashruff was then confined in the new fort, where he remained in the custody of Col. Hampton without any effort on his part for further trial and apparently forgotten by all till about December 1784, when he employed Tolfrey as his attorney to obtain a writ of

Habeas Corpus from the Supreme Court. On 18 December 1784, Tolfrey wrote to Hampton a letter of enquiry which was shown to Hastings who directed that the prisoner would not be delivered up without the writ of Habeas Corpus. Hampton replied accordingly and informed Tolfrey that the prisoner was confined by the Governor-General's order and not his in any respect. Before his departure from this country early in 1785, Hastings recorded in a minute his opinions about Gholam Ashruff. In order to prevent a revival of disputes and "for the sake of humanity and justice", he recommended that Gholam Ashruff, Barkatullah and the five others might be immediately sent to Murshidabad for trial before Reza Khan. In February Tolfrey again wrote that the writ of Habeas Corpus had been granted but it could still be prevented from being served if only Hampton voluntarily discharged Gholam Ashruff. The request went unheeded. A writ was thereafter issued (10 February 1785) directing Col. Hampton to produce the person of Gholam Ashruff before Justice Hyde or any other judge of the Supreme Court. On 15 February the Council referred the case to the Advocate-General J. Day for his opinion. He too confirmed the views of Hastings and advised that for the forgeries committed outside Calcutta, Gholam Ashruff should be removed to the Faujdari jurisdiction of Murshidabad, but his removal should be suspended pending the submission of Hampton's return in respect of the Habeas Corpus. It was decided that the recommendations of the former Governor-General and the Advocate-General would be followed. On 9 March, Hampton brought Ashruff to the Supreme Court and filed his return wherein he submitted that as Gholam Ashruff's guilt had been fully proved by the investigation conducted by the Council and as he was a Muslim native of Bengal and not subject to the jurisdiction of the Supreme Court, the Council had ordered that he should be removed to the Faujdari court of Chitpur, "to which jurisdiction and which only" he was subject for the said forgeries. After much argument, the Supreme Court unanimously declared the return to be

sufficient and remanded Gholam Ashruff to the custody of Hampton (25 March) and shortly after, he was removed to the Faujdari prison of Chitpur.

In a petition to the Governor-General, Gholam Ashruff now accused both Prankissen Sing and his father, Diwan Ganga Govinda Sing. To investigate the whole case a special Commission was constituted, with Wilkins, Duncan, Grant and White as members. On 19 August 1785, the Commissioners submitted their final reports to the Council, fully exonerating the Diwan and his son from all the charges brought against them by Gholam Ashruff who had confessed his guilt. The Supreme Court had long before declared him to be outside its jurisdiction. No objection from any quarter was, therefore, raised when he was committed to the criminal jurisdiction of the Nawab's government, along with Barkatullah and six others. Though a Persian copy of the proceedings of the Commission was also sent, it was clearly stated that these proceedings were only meant to assist the Naib Nazim in regulating the conduct of the trial and not to serve as guide for the decision of the native court. The Naib Nazim was directed to proceed according to the law of this country.¹⁴

It is to be noticed that the alleged forgeries were committed at and outside Calcutta and were as such cognizable by courts of different jurisdictions. It was a matter concerning the Company's treasury. The English Government, therefore, kept him detained for about two years and a half and at last set up a special Commission of investigation. Next, the Supreme Court had unquestionable jurisdiction over Fort William and a prisoner confined there for any offence whatsoever was subject to its process. The Supreme Court was, therefore, justified in issuing the writ of Habeas Corpus. On the other hand, as a Muslim native of Bengal, Gholam Ashruff was amenable to the Faujdari jurisdiction of the Nazim for the forgeries which he committed outside Calcutta.

Though Gholam Ashruff's case fell under all the three jurisdictions, it did not bring about any conflict of authority.

Both the Council and the Supreme Court were cautious in their processes and never overstepped reasonable bounds. The Nizamat served in this case rather as a buffer. It was not so much "for the sake of humanity and justice" as for avoiding a clash with the Supreme Court that the English Government took advantage of the legal loop-hole whereby the case could be transferred to the Nawab's jurisdiction. Strikingly enough, the Supreme Court had completely got rid of its former obsession that the Nizamat served only as a cloak to screen criminals. It gave consent and maintained a state of quiescence when Gholam Ashruff's case was committed to the Nawab's jurisdiction. A notable aspect of this case is that it required full six years (August 1782—August 1788) to be decided. This delay stands in sharp contrast to the infamous case of Nandakumar of the preceding decade.¹⁵

While robberies, murders and other crimes were frequent, the delay in trials seems to have been tremendous. Though the substitution of British magistrates for Indian Faujdars introduced a greater regularity in the arrest of criminals, their lack of authority to interpose in the criminal proceedings brought forth a new evil inasmuch as persons accused of even slight breaches of peace had to be handed over to the Faujdari Darogas. Thus unavoidably confined in a very small place, many of these prisoners met with death even before their turn for trial came. In the circumstances their sufferings caused by delayed justice far outweighed their offences. And persons liable to be punished with a few koras only under the law of the land were indefinitely detained like serious offenders. The ends of justice were thus defeated.

In April 1785, Keating, magistrate of Bakarganj, drew the attention of the Council to the fatal consequences of such protracted confinement. He ascribed the delay in the trials not to the negligence of Darogas, but to the great number of delinquents, litigiousness of the parties and the difficulty of obtaining evidence from distant parts of the country. For a speedy and effectual administration of criminal justice, Keating

made also a recommendation which after a slight modification was incorporated in the Council's resolutions of 15 April 1785, empowering the magistrates to try and determine petty cases of assault, calumny, pilfering and the like. But in all matters affecting life or limb of the accused or involving imprisonment for a term exceeding four days or corporal punishment exceeding 15 rattans, the magistrate was required to commit the cases as usual to the nearest criminal court. Thus one more feather was taken off from the Nazim's cap.¹⁸ Beyond this, however, there was no interference with the Daroga's authority.¹⁹

When informed of this additional trust, the magistrates came forward with certain suggestions. These were generally for power to impose fines also and for an increase of their establishments, obviously necessary for discharging this additional responsibility.

Something else which needed correction was the activities of the zamindars, talukdars, thanadars and naibs, many of whom made it a practice to exercise a judicial authority by confining poor ryots on trivial or false pretexts, extorting money from them and carrying away their crops while themselves conniving at the major offenders. But these types of persons were seldom brought to justice.

Beeby, magistrate of Nator, therefore, tendered the suggestions that (a) fines be imposed on delinquent zamindars talukdars and others, (b) exemplary punishment be inflicted on the guilty naibs and thanadars, and (c) a European assistant be appointed besides the 'native' officers in the establishment. Ives of Murshidabad proposed that in cases where imprisonment or corporal punishment was not possible, magistrates should be vested with authority to levy a fine not exceeding Rs. 200. Petrie, magistrate of Calcutta, urged the positive necessity of appointing a 'native' officer of the rank of Daroga with a decent allowance, two muharrirs, and one person for translating and copying the abstracts. Lastly, he asked for an allowance for a separate jail. It was felt that the Regulations relative to this new arrangement should

be uniform for all the districts. The magistrates were, therefore, called upon by the Council to submit their proposals for the most satisfactory discharge of their additional duty without any new expense to Government.¹⁷

The policy of financial stringency acutely affected the Faujdari Adalats and undermined their standard. Macpherson himself admitted that the Faujdari establishment was "too much curtailed." But even then he refrained from proposing any expansion for the reason that it had throughout been the policy of the Company to reduce expenses and conduct all business with the strictest economy.

Towards the end of 1785, certain orders of the Council created a panic among the Nawab and all the servants of the Nizamat. The orders required that along with all the employees of the Company, the Nawab and his servants should henceforth draw their salaries by means of certificates carrying an interest of 8 per cent and that the certificates issued to the Nizamat should be countersigned by the Nawab and the Resident. As this arrangement would considerably increase the work of Resident Pott, he was to be granted a commission of 5 per cent upon all stipends that might be paid through him. The Nawab was pressed hard for giving his consent to this measure. But the arguments in favour of this arrangement reminded the Nawab of these lines : "Jump into the well fearlessly and it will be to your advantage, let the wound be inflicted on your bone and it will give you no pain, give up taking food and it will cause you no affliction or sit in the market place and it will not lower you in the estimation of others." The repeated protests of the Nawab and prayers of Naib Nazim and the Begums, however, bore fruit and in June 1786 the Governor-General agreed that, in future, half of their stipends should be paid in money and half in certificates. The Nawab vainly protested against this arrangement also.¹⁸ No positive improvement of criminal justice was possible without a liberal sanction of funds for the Faujdari establishment. This point the Naib Nazim had striven to bring home to the Council over and

over again. In May 1787 he appealed once more for a monthly increase by Rs. 2,388.²⁰

Duality of control in the police sphere led to continual conflicts between the magistrates and zamindars. The mofussil Police—the girdawars, thanadars and paiks—were subject to the orders of magistrates. But they were also under the immediate authority of the zamindars and it was not within the power of magistrates to appoint or dismiss them and, therefore, to prevent their collusive practices of sheltering criminals from punishment. The mofussil areas were almost entirely unprotected. Murder and dacoity were frequent. All the vigilance and activity of the magistrate proved insufficient in the existing set-up to prevent the recurrence of crimes. All he could do on hearing of any outrage was to despatch some men to pursue the offenders. The outcome of such a pursuit was often uncertain. The zamindars could hardly be expected to extend sincere co-operation to the magistrate who had come over to exercise check on their activities—a situation which obviously favoured the escape of criminals, and frequent escapes emboldened them. The people hardly derived any protection from the proclamation of June 1782. In the opinion of a Tirhut collector, not a single instance occurred in which the property of a zamindar was confiscated for neglect of duty. "Nor can I quote", wrote the collector of Burdwan, "a single instance where the stolen effects have been recovered or the property reimbursed by the Zemindar although the whole gang of the dacoits may have been apprehended."²¹

Nevertheless these remarks have to be accepted with some reservation, for in certain cases the zamindars were indeed compelled to pay the penalty for breach or neglect of their police duties. In May 1783, Rani Sarbeswari, zamindar of Sultanabad, was dispossessed of her zamindari for complicity in several robberies committed by the hill-people of Sultanabad. She was allowed to enjoy only one-tenth of the actual collections of her zamindari as maintenance during her lifetime.²² In May 1783 after the plunder of the Jagannathpur

factory, Kotwals, thanadars, pasbans and servants of the neighbouring zamindars and talukdars failed to produce the thieves. In consequence those zamindars were compelled to pay the penalties fixed by the Naib Nazim.²² Again, following a daring robbery in March 1786 at Nauhatta in Bhaturia of a despatch which was being sent by Kanta Babu from Baharband to Kasimbazar, Rani Bhawani, zamindar of Rajshahi, was asked to make good the loss.²³ In September 1789 the Raja of Burdwan was called upon to pay the sum of Rs. 14,729-13-3, i.e., half of the money carried off by robbers from Sherburne, collector of Birbhum, while he was passing through the Burdwan district. The Raja remonstrated, but at last paid the money in December.²⁴ In common practice, however, the zamindars continued to discharge their functions as carelessly as before, without being forced to make restitution for depredations.

The reports of magistrates were full of instances of dacoities and murders, their own difficulties in encountering these and complaints against the misconduct and negligence of the zamindars and their servants. "The object of the present system", wrote the Chief of Murshidabad, "cannot be so effectually realized while the Fauzdarry and Revenue jurisdictions remain separate."²⁵ The much-abused authority of the zamindars over the appointment and dismissal of the thanadars and paiks was strongly resented by all the magistrates of the western districts of Bengal.²⁶ The thanadars who acted as chiefs of the police divisions were allowed a portion of chakaran lands for their maintenance, but no salary. Under the thanadars was an establishment of paiks stationed in every village of a pargana. From a statement of Pye, Chief of Burdwan, it appears that in 1782 the police establishment of the Burdwan zamindar consisted of 100 thanias and 422 subordinate chaukis and that an area of chakaran land measuring 46,488 bighas and 4 cottahs was usually appropriated for the maintenance of this establishment, besides the annual allowance of Rs. 23,095-9-0 which was paid by Government to the Raja of Burdwan.²⁷

The Burdwan magistrate complained that for years past the thanadars and paiks had received none of the allowances granted to them by the Government. Their lands had been resumed. They had to purchase their appointments at most exorbitant rates at public sales. They were subjected to annual exactations for their continuance in office. To indemnify themselves, the thanadars in their turn realised large considerations from dacoits for granting them protection or screening them from the hands of justice. They also made the inhabitants within their jurisdiction pay heavily and punished them with excessive fines on pretences of murder, robbery or adultery. As orders of the magistrate for the arrest of dacoits had to be executed by these thanadars, it depended upon them whether or not the dacoits would be brought to justice and the most strenuous endeavours of the magistrate were but too frequently defeated by these men.

The English Government, however, held a different view. The thanadars and paiks were employed by zamindars for the purpose of preserving the peace of the country, protecting the mofussil treasuries, escorting treasure and assisting in the collection of revenue. The separation of these officers from the revenue department would mean a new expense to the zamindars. Moreover, if the zamindars were deprived of the service of the thanadars whose special duty was to guard the country, they could not with propriety be made responsible for robberies or other crimes committed within their zamindaris. So the English Government deemed it proper that the thanadars should continue to be appointed and dismissed by the zamindars.⁸¹

The magistrate of Burdwan found it absolutely beyond his power to apprehend notorious criminals like Ganga Hari, Sona Dallye and their accomplices who were in the service and under the protection of so powerful a zamindar as the Raja of Burdwan and carried on depredations in the districts of Birbhum, Pachet and Burdwan. Sona Dallye, as the magistrate of Ramgarh pointed out, was permitted by the Raja of Burdwan to possess 1200 bighas of land, free of

rent. In this connection the magistrate of Murshidabad also represented to Government that there was little prospect of the Burdwan criminals being brought to justice, until the Faujdari authority of the magistrate was more exactly defined and more effectually established.⁸³

Keating, magistrate of Bakarganj, also explained how the local zamindars put obstructions in his way. As soon as the zamindars came to know that the magistrate had issued a warrant for seizing and apprehending delinquents, they either put these delinquents under confinement for non-payment of revenue or made representations to the Chief of Dacca to summon the accused on the same plea.⁸⁴

Even the arrest of dacoits did not mean the end of troubles for the magistrates. On 13 November 1785 Leslie, magistrate of Burdwan, reported that more than five months ago he had arrested the infamous dacoit Gulka Hati and fifty-three of his gang. The Faujdari Daroga having no sufficient number of guards made a special request to the magistrate to keep Gulka in his custody. This request was complied with. Throughout these five months, no step was taken by the Nizamat for the trial of Gulka and his associates and there was a large body of dacoits continuously on the watch to find a favourable moment for rescuing him. "Thus situated, Gentlemen," wrote the magistrate, "circumscribed in my Fouzdarri Establishment, unassisted by the Rajah and every obstruction thrown in my way by the tannadars whose immediate duty it is to obey my orders and protect the district, I really am unable to act with proper effect."⁸⁵

The problem of the magistrates was materially different in certain districts of Eastern Bengal where, as the Dacca magistrate put it, an actual though not legal transfer of the landed property was in general made after the establishment of European authority.⁸⁶ Persons known as zamindars who in former times were the real proprietors of lands with uncontrolled authority over the inhabitants were reduced at this period to "either insignificant pensioners to the Government or subordinate agents to temporary possessors of

their estates, the farmers or amils." The idea of associating police responsibility [with the possession] of lands might have served very well under the Muslim rule, but Shee desired the English Government to consider its futility in the light of the changed circumstances. He pointed out another insurmountable obstacle to the success of this "system of compulsive local responsibility." It was impracticable, in his opinion, to fix criminality on any particular individual on account of the very nature of the country and the small parcels of lands into which it was divided by rivers and nullahs. The number of zamindars in the parganas of Dacca was at that time about four hundred and those parts of the country during several months in the year were so totally submerged that communication between the villages except by water was not possible. Indeed, during the rains, when in many districts the face of the country resembled a sea with small islands at irregular distance rising above its surface, the dacoits were very secure with their swift rowing boats and the task of tracing their movements or discovering their haunts became extremely difficult for any individual zamindar. Also, however strict a zamindar might be in the policing of the country, it was impossible for him to prevent robberies committed within his jurisdiction by residents of a neighbouring zamindari on whom he had no authority. Dacoits rarely committed their depredations in the zamindaris in which they lived. If they received check in one zamindari they moved to another to continue their activities.

All the petitions of the magistrates stressing the necessity of transferring to them the direct control of the rural police were, however, turned down by the English Government who were not yet prepared to set aside the police responsibility of the zamindars.

The numerous problems of the prison administration also called for radical reforms. Control of the prisons was vested in the Faujdari department and the Daroga was in charge of the jail, records and malkhana (storehouse) attached to his Adalat. Monthly advances were made from the treasury

towards the subsistence of prisoners. The sum used to be repaid when the cash for the purpose was issued by the Nawab. The prison administration never received due attention of the Mahomedan Government. Owing to lack of proper arrangements, the prisoners often went without food for days together. The jails were always over-crowded. Through hunger and toil as also for want of adequate accommodation, many of the prisoners perished.

By the Regulations of 6 April 1781, the Daroga was directed to submit monthly to the Remembrancer a list of persons confined and discharged by him.³³ But nothing was done to improve the condition of jails, although the magistrates continued to point out the inefficacy of the existing arrangements. The power of arrest given to magistrates without the corresponding power of trial served to increase the congestion in Faujdari jails and suspects were consequently left in prison for months and even years without trial. In 1782 Henckell, magistrate of Jessoore, suggested that notorious criminals might be sent to sea, since many captains were then searching for native sailors. As for the ordinary prisoners he proposed to employ them in the public works at Budge Budge. Nothing came out of this proposal.³⁴ When the Council decided upon the construction of a road to Bhagalpur by clearing the jungles, the Naib Nazim was asked on 24 January 1783 to order the officers of Murshidabad, Patna, Dinajpur, Purnea and Bhagalpur to send immediately all the prisoners under their respective charge to Cleveland, collector of Bhagalpur, for work on the project.³⁵ Henckell, later on, proposed a new scheme which went by the name of the Sundarban Plan. It aimed at reclaiming the Sundarbans, partly by utilising the labour of convicts and partly by giving grants to zamindars and talukdars. A convict colony was to be established by allotment of small pieces of lands to all but the notorious delinquents. The Board of Revenue approved of this plan and Henckell requested that the long term prisoners from the neighbouring districts might be sent to enable him to start the convict colony.

No action appears to have been taken on this proposal also.³⁶

In April 1785 the magistrate of Bakarganj observed that so great a number of prisoners were detained in a very small place covered only with "chupper" (straw) that many died before trial.³⁷ Towards the middle of 1785, the rooms in the Calcutta jail happened to be inundated with water and many of the prisoners were without any clothes at all.³⁸ The jail at Chatra, wrote the magistrate, was in so dilapidated a condition that it was in imminent danger of collapse, particularly during the rains. Thrice within a year, its inmates escaped by cutting holes through its mud wall.³⁹

Notwithstanding the miserable plight of the jails the English Government did not positively move in the matter on the obvious ground that the jail administration was the province of the Nawab's government.

In May 1786, Lord Cornwallis left for India with some positive instructions from the Directors. Besides the formation of regulations for the collection of revenues, the Court's letter of 12 April 1786 recommended a revision of the existing judicial system in conformity to the combination of the revenue and judicial powers in the hands of European civil servants. It was hoped that this would "tend more to simplicity, energy, justice and economy." The continuance of the administration of criminal justice by the Mahomedan judges was however prescribed.⁴⁰

At daybreak on 12 September 1786, Cornwallis landed from the *Swallow* to take his seat as the head of the Council at Fort William. On 27 June 1787, were promulgated certain Regulations for the criminal administration based on the orders of the Court of Directors.⁴¹

The district Diwani Adalats were placed under the superintendence of the collectors, except in the cities of Murshidabad, Patna, Dacca and Calcutta. The power of apprehending criminals which the Regulations of 6 April 1781 had conceded to the judges of Diwani Adalats, now devolved, as a matter of course, on the collectors. Thus the collectors were vested

with the triple power of revenue agents, civil judges and police magistrates. Calcutta was subject to the Supreme Court of Judicature and the cities of Murshidabad, Patna and Dacca were allowed separate jurisdictions.

The magistrate was further empowered to hear and decide upon such petty offences as calumny and affrays and to award corporal punishment not exceeding sixteen rattans (stripes) or fifteen days' imprisonment. But in all cases affecting the life or limb of the accused or calling for punishment heavier than those specified above, the magistrate was bound to commit the accused within two days of their arrest to the nearest criminal court along with a written charge in Persian.

For cases where the complaints preferred appeared to be groundless and vexatious, the magistrate was authorised to inflict punishment to the extent specified above or to levy fines on the plaintiffs for compensating the defendant. He was to exercise his discretion in fixing the amount of the fine on due consideration of the circumstances of the case. This fine was not to exceed Rs. 200 when imposed on the zamindars or talukdars paying an annual revenue of ten thousand rupees, or possessors of 'ayma' land paying the annual rent of five hundred rupees or persons enjoying free land with an annual produce valued at one thousand rupees. For persons not included in any of the aforesaid categories, the fine was not to exceed fifty rupees. The new Regulations required the magistrate to record all complaints and their own orders, both in English and Persian, and to send them monthly to the Remembrancer, along with a report on the criminals taken into custody, the punishments, if any, and the committals to the Daroga and the like. It was also the magistrate's duty to facilitate the execution of the orders of indemnity passed by the Faujdari court and confirmed by the Sadr Nizamat Adalat.

All Europeans, not British subjects, were equally amenable with the native people to the authority of the magistrates and to the Faujdari courts to which they might be committed.⁴² But British subjects were amenable to the Supreme Court of Judicature alone and therefore whenever apprehended,

they were to be despatched under guard to the Supreme Court. In case the magistrate found it necessary to arrest any zamin-dar or land-holder and commit him to the Faujdari court for trial, he was to send an intelligence thereof to the Governor-General and Council.

The police establishments of the different collectors numbered twenty-three, nineteen in Bengal and four in Bihar.⁴³ Their monthly allowances varied between Rs. 150 and Rs. 330 according to the requirements of each station.⁴⁴ Of the four collectorships of Bihar, each enjoyed an amount of Rs. 250. Every such magisterial establishment consisted of a jamadar, several muharrirs and "akrajaut," and chaprassis. At the end of each month, the magistrate was to send to the Remembrancer a monthly account of the receipts and disbursements of his police establishment.

A monthly sum of Rs. 475 was sanctioned for each of the three Kotwali establishments of the cities of Murshidabad, Dacca and Patna. It is to be noted that the Kotwali establishments of June 1787 cost as before the total sum of Rs. 1,425 per month. Its difference with the earlier system of 1782 was merely that while in the new set-up this sum was equally apportioned to the three cities, in the earlier one Rs. 575 was allocated to Murshidabad and the other two received only Rs. 425 each.

The Police establishments of the twenty-three collectors were considerably reduced. In 1782 the monthly grants for the seventeen magisterial establishments amounted altogether to Rs. 7,630 and varied between Rs. 240 and Rs. 810 for each establishment. But the Regulations of 1787 allowed only Rs. 5,785 and lowered both the minimum and maximum allowances of each station—the minimum to Rs. 150 and the maximum to Rs. 330.

The administration of criminal justice remained vested in the Naib Nazim. In the Faujdari Adalats the Mahomedan Darogas appointed by and subordinate in all respects to the Naib Nazim continued to function as before. Criminals arrested by the magistrates were referred to these courts for trial.

except in respect of very petty charges, cognizable by the magistrates themselves.

The Daroga was required to furnish the Naib Nazim with a detailed report of his monthly proceedings, accounts of diet and other jail charges and stores, his prisoners, whether under trial or convicts, and other relevant matters, if any. He was further directed to prepare according to Arabic months, a monthly report in Persian, detailing all information about the prisoners under his charge. Translated by the magistrate, they were to be regularly forwarded by the Remembrances to the Governor-General.⁴⁴ Some remote provisions were also made for the improvement of the jail administration. In the Faujdari jails separate blocks were sought to be set up for the convicted and under-trial prisoners. In cases where such an arrangement was impracticable, the magistrate was enjoined to find out a convenient site and submit to the Governor-General an estimate of expenses for building a separate jail for the prisoners under sentence. The magistrate was also enjoined to inspect the jail at least once a month, and to report to the Governor-General cases of ill-treatment of prisoners by the Daroga or his inattention to the sanitary arrangements. The Governor-General in his turn was to make representations to the Naib Nazim for remedial measures.

For regular dispensation of justice the Daroga was required, on pain of dismissal and debarment from future employment, to be in continued residence at his station and hold court at least three days in the week all the year round. The Naib Nazim could, however, grant the Daroga leave of absence not exceeding twenty days and in that case also, he was to appoint a temporary deputy (naib) of the Daroga.

Four new Faujdari Adalats were established one in each of the following places:—Krishnagar, Sylhet, Mymensing and Birbhum-Bishnupur. The monthly allowances sanctioned were Rs. 3,319 for the Sadr Nizamat Adalat and Rs. 495 for each of the twenty-two Faujdari Adalats. It was from the collector of Murshidabad that the Naib Nazim was to draw

funds for his fixed Faujdari establishments and distribute the same to his subordinate officers. As for the contingent expenses (*viz.*, diet charges, kachahri and prison receipt etc.) he was to prepare as before a kubz (receipt) along with a detailed estimate and forward it to the Governor-General through the Remembrancer. Passed by the Governor-General, this receipt was to be returned to the Naib Nazim so that he could draw the amount from the collector of Murshidabad and make the necessary disbursements.

The Regulations of June 1787 indicate a marked improvement on the preceding systems so far as the finances of the Naib Nazim's Faujdari establishments were concerned.⁴⁶ The provisions of 5 July 1782, as we have seen, were inadequate for the actual requirements, and occasional additions were subsequently found necessary to some of them. But those little concessions were not enough to meet the demands of the Naib Nazim, who continued to appeal for a substantial enhancement of his Faujdari staff.

While the allowance granted in 1782 to each Faujdari Adalat was retained in the new scheme, four new Adalats were created so that the total monthly expenditure of the twenty-two Faujdari Adalats rose to Rs. 10,890, as against Rs. 8,910 of the scheme of 1782. From a comparison of the different establishment charges provided for the Sadr Nizamat Adalat, during the last fifteen years, it appears that the grant of 27 June 1787 surpassed the former ones.⁴⁷

Though the new Regulations conceded an amount larger than what Reza Khan had asked for since 1782, this sum was not half as much as his claim early in 1782. As against Rs. 3,62,208 then demanded, his present receipt was only Rs. 1,70,508, a sum comparatively pretty low.

The Regulations of June 1787 did not usher in any novelty in criminal justice. As early as in 1781, judges of the civil courts had been authorised to apprehend criminals. With the amalgamation of the offices of civil judge and collector, the police responsibility devolved now on the collector in his judicial capacity.

The power to try petty criminal cases is generally believed to have been first allowed to the magistrates in 1787. But the facts show that it was on 15 April 1785 that the magistrates were first given that power. The provisions of 27 June 1787 only served to register an accomplished fact. All that they effected was a mere enhancement of that power—from four days' imprisonment and fifteen stripes to fifteen days' imprisonment and sixteen stripes respectively.

An imperfection that marks these actions of the Council is their persistence in curtailing the police establishments, notwithstanding the previous requests of the magistrates for liberal funds in view of swelling depredations and their own enhanced responsibility. The sum that these magistrates asked for even in 1782, was Rs. 6,39,246 per annum but what they received now was only Rs. 86,520. Evidently, the English Government interpreted their responsibilities as the governing power largely from a financial point of view. While efforts were made to solve the problem of delays in justice, little thought was given to the prevention of the very causes that invoked the process of justice. Years of dismal experience in the jungles and rivers, hills and highways of Bengal failed to make the English Government more liberal than before.

References

1. Rev. Cons., 18 May 1785.

In the same memorial Shore observed, "The general system of affairs in Bengal is wholly different from what it was ten years before ; the scale of connections and interests is greatly extended, and English forms of policy and law are introduced, the natives no longer look to one of their own country and sect as their Supreme Head, but to Europeans." This statement ought to be accepted with some reservation. "English forms of policy" were working into every channel, but not so the English Law. The inequities of Muslim penal law continued to operate as before.

2. It is interesting to note the factors attributed here to Reza Khan's inefficiency. The hint as to the interpositions of the individual Europeans is unambiguous.

3. C.P.C., Vol. VI, No. 527.

4. *Ibid.* No. 537.
5. *Ibid.* No. 765.
6. Rev. Cons., 1 July 1784.
7. C.P.C., Vol. VI, No. 763; Rev. Cons., 13 May 1783; Sylhet District Records, Vol. I, pp 147-8, No. 200.
8. C.P.C., Vol. VI, No. 662.
9. Rev. Cons., 29 June 1784.

In August of the same year, Reza Khan made another request for a monthly addition of Rs. 2,188 to his Faujdari establishments. The particulars of this increase were specified, but they were deemed much too high by the Council, who adhered to the sum of Rs. 570 already passed in June. On 26 July 1786, the monthly increase of Rs. 570 was admitted to be a part of the Naib Nazim's fixed establishment. (Rev. Cons., 26 July 1786).

10. The monthly expense of the Sadr Nizamat Adalat was till then Rs. 2,909. The sum now apportioned for it was Rs. 3,319.

11. The monthly establishment of the Madrasa was as follows :—

	Rs.
Preceptor ...	300
40 scholars at the rate of Rs. 5 to Rs. 7 each	222
A sweeper ...	3
House rent ...	100
	<hr/> 625

12. Pub. Cons., 18 April 1781, 3 June 1782; Rev. Cons., 21 June 1785; C.P.C., Vol. VII, Nos. 3, 27.

13. Rev. Cons., 30 Sept. 1785.

14. For Gholam Ashruff's case, see Rev. Cons., 10 March, 1 April, 20 April, 10 May, 18 May, 22 June, 24 June, 19 August, 1785; 3 August, 4 Sept. 1786; 8 Sept. 1788; Sylhet District Records, Vol. IV, Catalogue of Sylhet Records (1777-91), p. 310; Seton Karr, Selections from the Calcutta Gazettee, pp. 150-53; C.P.C., Vol. VI, Nos. 564, 1577; The Nesbitt Thomson Papers, I, *Bengal : Past and Present*, Vol. XIII, pp. 154-55, *Ibid.* II, *Bengal : Past and Present*, Vol. XV, p. 70.

Two more years passed by and on 25 August 1788, Reza Khan sent the decree and orders of the Sadr Nizamat Adalat for the Governor-General's perusal and orders. By that time three of the prisoners were dead. Only Gholam Ashruff and three others were alive. The perfidy and crime of Gholam Ashruff were found to be proved and the sentence passed on him was perpetual imprisonment. (Rev. Cons., 8 Sept. 1788).

15. The charge of forgery against Nandakumar was brought by Mohan Prasad on 6 May 1775. The trial began on 8 June and lasted

till the midnight of 15 June. The case was summed up by the Chief Justice in the early morning of 16 June and Nandakumar was executed on 5 August 1775.

16. Rev. Cons., 15 April 1785.

17. *Ibid*, 26 Oct. 1785.

18. C.P.C., Vol. VII, Nos. 401-2, 408-11, 415-18, 441, 471, 504, 558-61, 579, 582.

19. *Ibid*, No. 1346. The Regulations of 27 June 1787 sanctioned an additional amount of Rs. 2,390 for the Faujdari establishment of the Naib Nazim.

20. Rev. Jud. Cons., 18 March 1791.

21. Rev. Cons., 6 May 1783. She was the childless widow of zamindar Gurgun Sing. For an account of her depredations see Browne's letter (Rev. Cons., 27 Jan. 1778).

22. Dinajpur District Records, I, p. 85, No. 121. Zamindars of five Dinajpur parganas listed in one group had to pay Rs. 1,346-9-5.

23. Rev. Cons., 30 March 1786.

24. *Ibid*, 16 Sept. 1789.

25. *Ibid*, 30 Sept. 1783.

26. *Ibid*, 21 April, 8 July, 9 Sept., 1784; 1 Feb. 1786.

27. *Ibid*, 8 July 1784 for Pye's statement of 5 April 1782.

According to a statement of Brooke, the acting magistrate of Burdwan, dated 12 October 1788, there were 2,400 paiks under the thanadars for the express purpose of police. But exclusive of these guards there was a separate establishment of paiks, no less than 19,000 in number. They were at all times liable to be called out in aid of the police. (Rev. Cons., 22 Dec. 1788).

From a letter of Mercer, collector of Burdwan, dated 23 November 1790, it appears that there were at that time 36 thanas and within these thanas a total number of 446 subordinate chaukis or outposts at Burdwan. (Rev. Jud. Cons., 18 March 1791). The abstract of a statement appended to this letter is as below :—

	holding	3,071	bighas of land.
36 Thanadars			
1 Superintendent of the frontier pargana	"	140	" " "
1 City Kotwal	"	166	" " "
9 Naibs	"	330	" " "
470 Peons	"	7,309- 11	" " "
284 Paiks stationed at the chaukis with the thanadar	"	2,947- 8	" " "
446 Chaukidars	"	8,576- 9	" " "
758 Peons stationed with the chaukidars.	"	11,176- 5	" " "

1074 Paiks stationed with the chaukidars, holding	9,756- 1 bighas of land.
Total 3079	43,472-14 " "

28. Rev. Cons., 8 July 1784.
 29. *Ibid*, 25 Aug. 1784 ; 1 Feb. 1786.
 30. *Ibid*, 13 Sept. 1784.
 31. *Ibid*, 1 Feb. 1786.
 32. *Ibid*, 30 Sept. 1785.
 33. Rev. Cons., I. O. Copies, 6 April 1781.
 34. Westland, *op. cit.*, p. 63.
 35. C. P. C., Vol. VI, No. 670.
 36. Westland, *op. cit.*, pp. 63-64.
 37. Rev. Cons., 15 Apr. 1785.
 38. Pub. Cons., 30 Aug. 1785.
 39. Rev. Cons., 30 Mar. 1787.
 40. Rev. Dept. General Letter from Court, 12 Apr. 1786 ; Appendix 12 to the Second Report from the Select Committee, 1810.
 41. Rev. Cons., 27 June 1787.

42. Only a year earlier, about the middle of 1786, the Naib Nazim had granted several requests made by Emmanuel Rodrigues and other "Feringi" inhabitants of Hugli. One of these was that the disputes among the Feringis, other than murder cases, might be referred to their Padres for investigation and decision according to their religion and that no servant of the Sarkar should interfere in such cases. (C.P.C., Vol. VII, No. 587).

43. An abstract account of the monthly allowances assigned to the nineteen magisterial establishments of Bengal :—

Name.	Allowance.	Name	Allowance.
	Rs.		Rs.
1. Hijili	150	11. Twenty-four Parganas	250
2. Tamluk	"	12. Birbhum	"
3. Sylhet	175	13. Bhagalpur	"
4. Ramgarh	240	14. Jessore.	"
5. Burdwan	250	15. Midnapur and Jellasore.	"
6. Dinajpur	"	16. Rajshahi	330
7. Nadia	"	17. Murshidabad	"
8. Purnea	"	18. Dacca Jalalpur	"
9. Rangpur	"	19. Dacca Mymensing	"
10. Chittagong	"		

44. Specimens of magisterial establishments of different categories :—

(a) Sylhet—	Rs.	(c) Rajshahi—	Rs.
Muharrirs ...	100	Muharrirs	
1 Jamadar ...	15	and akrajaut ...	150
20 Chaprassis at Rs. 3 each ...	60	1 Jamadar	20
	—	40 Chaprassis at Rs. 4 each	160
	175		—
			330
(b) Burdwan—	Rs.		
Muharrirs			
and akrajaut ...	150		
1 Jamadar ...	20		
20 Chaprassis at Rs. 4 each ...	80		
	—		
	250		

45. The heads to be covered by Daroga's reports were as follows :—

- (a) Prisoners confined under sentences.
- (b) Persons on whom sentences had been passed by the Daroga.
- (c) Prisoners tried and their causes referred to the Naib Nazim for his sentence.
- (d) The Nazim's fatwas upon former references.
- (e) Prisoners under the Daroga's charge before trial.

46. Abstract accounts of the monthly Faujdari charges sanctioned on 5 July 1782 and 27 June 1787 :

<u>5 July 1782.</u>	<u>27 June 1787.</u>	
		Rs.
17 Magisterial establishments ...	7,630	23 Magisterial establishments ...
3 Kotwali establishments. ...	1,425	3 Kotwali establishments ...
Sadr Nizamat Adalat. ...	2,909	Sadr Nizamat Adalat ...
18 Faujdari Adalats. ...	8,910	22 Faujdari Adalats ...
	—	—
Total Rs. 20,874		Total Rs. 21,419

47. Grants for the Sadr Nizamat Establishment —

Date.	Amount.
29 Aug. 1772.	Rs. 2,785
24 Jan. 1776	" 2,909
5 July, 1782.	" 2,909
27 June, 1787.	" 3,319

CHAPTER VII

CRIMINAL ADMINISTRATION : 1787-1790

Seventeen years ago, young Mubarak-ud-daulah ascended the masnad of Murshidabad. All these years, his primary business was to sign humble petitions to state his distress and pray to his "master and patron" for an increase of allowance. He was brought up under the tutelage of either Munni Begum or Reza Khan whom he hated. His education was sadly neglected. For some years after his accession he had to live like "a state prisoner." His servants were instructed "not to suffer him to learn anything by which he might make himself acquainted with business."¹ His condition did not much improve even after he attained majority. Sometimes it happened that when the Nawab went to the mahalsara (inner apartments) the Begums and female servants pressed him for their necessary expenses so that he could "neither hear nor sit down" and was "obliged from shame to come out." If he went out to hunt or ride, the sepoys and other servants made such violent and constant complaints that he found it "impossible to ride." If he went to the Diwankhana, his attendants loudly demanded their salaries and related their distress so that he could not "remain seated there" also. If he sent for his dinner from the kitchen, sometimes the cook's reply was, "there is none."² "Naturally tender-hearted", he was disposed to relieve the unfortunate and the oppressed but not a single person happened to be "the gladder for his friendship nor the uneasier or worse for his aversion."³ Begging the continuance of a paltry sum for the oil and ink of the Imambara, he once wrote, "when no resource is left in the Nizamat (for in 16 lakhs of rupees I am much distressed and there are numberless children and dependants to the Nizamat) and when I am unable to provide the most inconsiderable expenses from the Nizamat, I am hopeful that you will reflect upon these circumstances and order the

above allowance to be continued."⁴ The Subahdar of Bengal, Bihar and Orissa prayed for the "right of riding in a palankeen", "granting titles of nobility", and keeping fighting elephants. And he would be highly obliged if the Company placed in his hands the government and judicial administration of the city of Murshidabad only. "I whose predecessors", wrote he, "possessed the Government of the three Provinces, have no authority in the very city of my Residence."⁵

The tragedy of his Subahdari was deepened by his financial embarrassment. While his elder brother Najm-ud-daulah had enjoyed an annual pension of more than 53 lakhs of rupees, he received since 1772 merely 16 lakhs. But the Nizamat had to be supported on the same scale of magnificence as before. While the Nawab gave himself up to dissipated and extravagant habits, everyman in his household made it a practice "to reckon as fair booty every rupee which he could embezzle out of his charge."⁶ Such being the state of things, it is not difficult to understand how by the year 1787, the Nawab had come to acquire so heavy a debt as Rs. 22,86,666-12-13-3.⁷

For Reza Khan the years that followed his second restoration were a period of comparative respite from the hostility of his enemies. Hastings had returned to England. Munni Begum and the Nawab were too engrossed with their private interests and financial problems to make any serious obstruction to his authority. Though Reza Khan had reached the ripe old age of seventy, "his chest was so broad, his body so erect, his tone of voice so very loud, and his eyes so very full of fire" that he seemed to have yet thirty years to live.⁸ The supreme control of criminal administration was still vested in him. The appointment and removal of the judges and officers of the Nizamat Adalat as also of the subordinate Adalats were still left to his sole discretion. The sentences passed by the Nizamat Adalat over which he presided and to which all cases affecting life or limb were referred by the mofussil Adalats, were final.

Nevertheless, by 1787 the affairs of the criminal courts had become a matter of public notoriety. The officers were either

negligent or prone to corruption. The law itself was inadequate or misapplied. The pivot of the administration of criminal justice was the Daroga of the Faujdari Adalat. He was the person on whom principally rested the management of trials. To him the district magistrate delivered prisoners for trial. The function of the Qazis and muharrirs was merely to assist him by suggesting questions and interpreting the laws, but nothing more. Cases affecting life or limb he was to try, but it was not for him to pass the sentence. He had to forward those proceedings to the Naib Nazim at Murshidabad. Even so, as the Naib Nazim's slender connection with the mofussil trials depended solely on the proceedings forwarded to him by the Daroga, the latter could with little risk of detection distort, omit or manipulate evidence in such a way as to procure from the Nizamat Adalat an easy acquittal of the persons of his choice.

Much as was thus the importance of the office of Daroga in the country's judicial system, most of the personnel holding this office, however, glaringly lacked in the integrity that their situation called for. They were often carelessly nominated without consideration of ability or education. Not only the Darogas but other officers too were generally recruited from the locality of their respective courts. By a continued residence at one locality they, therefore, came to acquire certain private interests, and were at liberty to exert the influence of their office to promote their own ends. Sometimes it also happened that the zamindar secured this office for one of his agents and the dependence of such persons on the zamindar or other influential people was responsible for many instances of miscarriage of justice. The outrages committed by the zamindars, the zamindari and Nizamat officers went on unabated as long as the Darogas connived at them. Only when some energetic magistrate arrested a notorious criminal and committed him to the Daroga's court, it was for the Daroga to discover a plea for mitigating his punishments, while shows of justice were maintained by inflicting severe punishments on petty offenders.

But it was easier to perceive the abuses in the system than

to obviate them. Even after the Regulations of 1787, the control of criminal administration remained largely in Indian hands. If the Darogas or their subordinates were inefficient or corrupt, the entire administration was bound to be vitiated. The abuses were too glaring to escape the notice of the local magistrates. But they had no direct command over the officers of the Nizamat. Their complaints against any of these officers had to be ultimately referred to the justice of the same Naib Nazim, whose servants the latter were. It could not be expected that justice would always be secured by lodging these complaints. Yet the facts below would show how they brought to light many shocking abuses in the administration of criminal justice.

In March 1788, Willes, magistrate of Sylhet, raised an objection to the appointment of Muhammad Ali as Daroga of the Faujdari Adalat of Sylhet, for Muhammad Ali was the zamindar of the Lunglah pargana and was a person against whom were pending at that time about twelve suits in the Diwani Adalat as well as several charges of oppression which he himself was to decide in his capacity of the Faujdari Daroga. Moreover, the Qazi with whose "advice" the Daroga was expected to function was his own son—a child of about six months. The injustice and evil consequences of such selections were only too obvious. On this representation of the magistrate, Cornwallis pointed out to the Naib Nazim the incongruity of appointing Muhammad Ali as the Faujdari Daroga, and recommended his recall as also the appointment of a Daroga and his officers totally unconnected with the district. Muhammad Ali was accordingly removed and one Golam Husain was sent from Murshidabad to take charge of the Faujdari Adalat of Sylhet.⁹

Bathurst, magistrate of Tirhoot, was disgusted with almost every procedure of the Darbhanga Faujdari Adalat. Repeated appeals since December 1787 from Schuman, an indigo planter of the Sarassa pargana, strongly impressed him as to "the shameless and iniquitous procedure" of that court.¹⁰ It was alleged by Schuman that to murder him, his wife had procured a poisonous worm through a maid, Curinan and given it to Kidroo,

the khidmatgar (servant) to pound and infuse the poison in Schuman's breakfast tea, which was accordingly done in the morning of 10 September 1787, whereupon he lay ill for three days. On his plaint, statements of the culprit and witnesses were taken at Muzaffarpur ; both Mrs. Schuman and Kidroo confessed their guilt. The case was then referred to the Faujdari Adalat of Darbhanga, the Daroga whereof proceeded with the case in a most illegal and partial way and treated the plaintiff "more like a criminal than one who came to sue for redress." Roopa, the principal witness of the prosecution, was permitted to stay with the accused. The prisoners attended the court thrice every day prior to the trial. Evidently, with the Daroga's connivance matters were concerted to overturn the original evidence and confession previously given. The remonstrances of Schuman's vakil against the illegality of such procedure went unheeded. Moreover, Curinan, the chief accomplice was never called to account but allowed to live at large, and Beebun who had been paid Rs. 25 for procuring that poison was not considered by the Adalat as of any importance. Similarly many others whose testimony might have corroborated the fact were entirely disregarded. Sheikh Jeeto who had been sent in irons to Darbhanga as an accomplice, was set at liberty on his merely denying any knowledge of the matter. Despairing of justice from the Faujdari court, Schuman requested the Tirhut magistrate to put a stop to further proceedings of his case (12 December 1787). In reply, he was told that it was not within the power of the magistrate to comply with that request. His petition of 8 January next also failed to stir the magistrate to any immediate action in his favour.

Under the orders of the Daroga, Schuman then attended the Faujdari Adalat (5 February 1788), only to be ordered that he should not leave Darbhanga until he had signed a document acquitting his wife. Actually two guards were set over him all throughout his stay there. His vakil also was abused and threatened by both the Daroga and the prisoners. On the 7th, the Daroga pronounced Mrs. Schuman and Curinan not guilty. Kidroo only was sentenced to receive 40 stripes. Schuman

protested against this and vainly applied to the Daroga to suspend the execution of the sentence until he received orders from his superior authority to whom Schuman hoped to apply. Even his request for a copy of the proceedings was refused. Without any delay, on 9 February, he laid all the facts before the magistrate, relating the flagrant partiality of the Daroga in favour of the real delinquents and the arbitrary severity towards the prosecution.

The magistrate could no longer overlook the case. On 18 February, he forwarded to the Council circumstances of this case. The Council requested Reza Khan on 26 March to examine the proceedings of Mrs. Schuman's trial. If it appeared that the trial had not been properly conducted, he was told either to order a retrial at Darbhanga or to summon the parties to Murshidabad for his personal investigation. Reza Khan sent for "Bibby Maria" (Mrs. Schuman) and the two other co-accused Beebun and Kidroo, but did not find any of them guilty. Mrs. Schuman does not appear to have ever met with any punishment for her heinous crime.¹¹

The circumstances of the aforesaid case corroborated in a way the adverse reports previously made by the magistrate against the conduct of the Faujdari Daroga of Darbhanga. The Daroga vexed him also by obstinately continuing at Darbhanga with his officers far from the collector's headquarters at Muzaffarpur. In December 1787 the magistrate's request for removal of the Faujdari Adalat to Muzaffarpur was turned down by the Council. Miscarriage of justice and escape of criminals became the common events of that district. In February 1789, the magistrate again represented the "insurmountable inconveniences" he experienced from escapes of criminals, due to the Daroga's continuous residence at Darbhanga instead of shifting the Adalat to Muzaffarpur "where", he alleged, "under the immediate eye of the magistrate he sees fewer opportunities of making murder a traffic and turning others' losses to the advancement of his own fortune." This time, the Council requested the Naib Nazim to order that Daroga to remove his court to Muzaffarpur.¹²

In the eastern part of Bengal too, occurred a glaring instance of miscarriage of justice, as revealed by the Dacca magistrate, following the petition of a prisoner at Dacca. This petitioner was none other than Narayan Chaudhury, zamindar of Bhowal, who had been in confinement for five years on a charge of having ordered the perpetration of a murder in the village of Burmee, an adjacent taluk. The Naib Nazim had sentenced him to be confined until he produced the alleged murderers. Upon a minute scrutiny of the circumstances and evidence of this case, the magistrate found that the charge was ill-supported. Depositions of all the witnesses except one, as well as the reports of the amins sent to enquire into the circumstantial matters, appeared to him to have been drawn from hearsay. Nor did it seem that those amins ever visited that village. Only one man gave any positive evidence. He swore that he was an accomplice in the murder.

On the other hand, the zamindar denied any secret knowledge of the murder. He also stated that he was below thirteen at that time and his zamindari was not in his own management and, therefore, he was not in a position to give the alleged orders. He asserted that the charge had been maliciously fabricated in order to deprive him of his nine-anna share of the zamindari. He further alleged that the Daroga who sat in the double capacity of judge and prosecutor, had an interest in his conviction, and the man who had sworn to be his accomplice was tortured most cruelly to make that declaration. No evidence was adduced in support of this defence. But on investigation, the magistrate noted that Mirza Mohsen, the Daroga in whose court the case was tried, was the manager of the zamindar of Burmee taluk, where the alleged murder was committed and also that the prosecutor in this case was not the heir of the deceased, but the gomastah of the said Daroga. It was proved that force, threats and illegal measures had been adopted to procure the confession of the so-called accomplice.

In view of the coercion employed to secure the incriminating evidence, the youth and inexperience of the prisoner and the misery of confinement already suffered by him, Champion

requested the Governor-General to order the Bhowal zamindar's release. The English Government took up the case, called for a copy of its proceedings and directed the Naib Nazim to release the unfortunate Bhowal zamindar on a suitable security.¹³

The four petitions below from different persons of certain villages of Burdwan will show how Daroga Makhanlal and other officers of the Burdwan Faujdari Adalat made it a common practice to extort bribe not only from the accused, but also from the complainants. One Krishna Mohan of Burdwan alleged that he had a cause pending in the local Faujdari Adalat and that Makhanlal, the Daroga thereof threatened him very much. To appease him he gave Makhanlal Rs. 15 and a piece of valuable cloth. As that bribe had not the desired effect, he applied to Mercer, the magistrate, and then to the Government at Fort William for constraining the Daroga to return the amount. Sankar Poddar of Khyrapur complained that although the robbers who had robbed him of cash and effects worth Rs. 200 were arrested with the stolen goods, they were able to secure their release by giving a bribe of Rs. 100 to Makhanlal and his officers. On another occasion also, the same Daroga took the bribe of Rs. 100. Padma Charan Pandey of Moradpur alleged that in consequence of his complaint in the Burdwan Adalat against two Brahmins for misappropriation of his grain worth Rs. 203, the accused were arrested. But as usual, they gave Rs. 100 to the Daroga and his officers and thereby procured their release. In their place then, the complainant himself was arrested by the Daroga. Again, Achal Hajra of Mohanpur stated that following a robbery at the house of Narasinha Ray, he was falsely accused by the thanadar Kalyan Sing, of complicity in the crime. The thanadar at once carried him away to Burdwan, confined him in his house and beat him every day. Later the thanadar offered to release him provided he would give Rs. 250 to be distributed among the officers of the Adalat, including himself and Daroga Makhanlal. Although the accused had no concern whatever in the robbery, his sufferings induced him to give Rs. 100 to these persons, which obtained his release. He prayed to the English

Government for redress. Thus it seems that in the Burdwan Adalat, it was money which softened or hardened justice.¹⁴

For many abuses in his administration some responsibility must be personally shared by Reza Khan also. According to Ghulam Husain he used to pass his time in playing cards and dice. How much truth there is in this statement of a hostile contemporary, it is difficult to judge.¹⁵ Fault was often found with Reza Khan for his failure to prepare the records promptly. The delay in this business was ascribed by him to the inadequate number of writers in his courts, both in the Sadr and the mofussil. At the Sadr Adalat, it was not possible for one munshi and four muharrirs to write the abstracts and copy the records forwarded from all the twenty-three zilas, some of them containing forty to fifty sheets in one proceeding. In the mofussil courts also, he added, additional muharrirs were required for writing the essential reports.¹⁶

On the other hand, Reza Khan's laxity was criticised by some of the magistrates. In his letter of 7 March 1788, the Chatra magistrate attributed the increasing depredations in his town partly to the great indifference shown by the Nawab to the trials transmitted from his place. During his stay at Chatra for the last two years, he had apprehended a great number of murderers and robbers, and frequently addressed the Naib Nazim on their cases but the latter had not even for once deemed it proper to treat any of them in an exemplary manner. As matters stood, he alleged, a poor man had only to commit a robbery to secure for himself a maintenance of three pice per day for life.¹⁷

The maladies of the criminal administration of Bengal attracted Cornwallis's serious attention shortly after his arrival in India. For the sake of humanity as also in the interest of the Company, he felt himself called upon to remove them. With a genuine respect for law and faith in the superiority of the English Law, was commingled in his mind a deep distrust of the capacity and integrity of the Indians—an aversion to the principles and practices of Indian governments. As regards brilliance, he compared unfavourably with Hastings, but he

had no Francis or any Triumvirate, ever eager to oppose, ever ready with obstructionist tactics. And in one rare fortune, he outdid all his predecessors. He enjoyed the complete support of the home government. Even so, he did not launch his reforms all at once. He proceeded cautiously and rather chose to move on the lines laid down by Hastings. It was Hastings actually who had inaugurated a policy of bifurcation of control in the criminal administration. The appointment of a Remembrancer of the criminal courts and the gradual transfer of certain magisterial and judicial powers to the collectors were unmistakable steps towards the concentration of judicial functions in the hands of the Company. Yet the nature of Cornwallis's interpositions indicates a new emphasis—a bolder purpose.

The frequent interpositions in the Faujdari business made by him even during the years 1787-90, were not strictly speaking warranted by the Regulations under which he acted. But the corruption in the law courts and many of the sentences, either cruel or inadequate, had to be met with timely remedies. From all parts of Bengal poured in representations from the magistrates on the questionable sentences of the Naib Nazim. And if his Government could not repudiate the laws that guided those decisions and secure through law, adequate punishments for notorious criminals, it at least found out a device which was expected to be a successful deterrent and solution for many vexatious problems. It was in this period that the idea of transportation to Penang was gaining ground.¹⁸ This was recommended for the leaders of gangs, the prisoners under life sentence and also for those who were to forfeit their limbs.

Henckell, magistrate of JESSORE, submitted on 7 May 1788, a proposal for the treatment of convicts. It was that petty offenders on short terms should be employed for a limited period in the cultivation of the Sundarbans, or in any public work. This was approved by the Council. As regards the sardar dacoits, Henckell suggested their transportation to some remote place ; this was expected to dissolve their gangs and check their depredations. The Council appreciated this proposition. But an alteration in the criminal jurisdiction of the country was

not deemed advisable without a reference to the Naib Nazim. The Governor-General, therefore, recommended to the Naib Nazim that a sentence for imprisonment extending over a term of seven years or more or for work upon the roads should be commuted to transportation to some foreign settlement for a period less by three years than the original term. And in no case should this exceed ten years.¹⁹ In the same year Thomas Law, magistrate of Bihar, also recommended transportation to Prince of Wales' Island for the prisoners condemned to perpetual confinement (9 June 1788).

Shortly after, the Naib Nazim also gave his opinion on the reference made to him regarding the transportation of dacoits. The commutation of the decrees for perpetual or fixed term imprisonment was contrary to the law and would, he thought, occasion great confusion. In one way, however, the prisoners sentenced to perpetual or indefinite imprisonment might be removed ; it was by sending them annually or half-yearly from each zila to Calcutta to be transported therefrom to some other place. But those under fixed term imprisonment could not, in his opinion, be transported without a perversion of justice.²⁰

Of the six decrees of the Naib Nazim received by the Shahabad Adalat early in 1790 (6 February), one was on two robbers. One of them had been sentenced to imprisonment, the other was to lose his right hand and left foot. Instead of enforcing immediately the Naib Nazim's sentence the Daroga sought the advice of the district magistrate. As usual, the magistrate referred the sentence to the Council who commuted it to transportation to Penang.²¹

On 22 October 1789, the magistrate of Bihar referred a murder case to the Government at Fort William. He remarked that he had so often, evidently without success, addressed the Government upon the subject of the Muslim law of compromise for murder, that he should have refrained from making any further representation, but for the peculiar case of Gerboo. To secure a bigger share of his patrimony, Gerboo murdered one of his two brothers. The surviving brother pardoned him, either because he too had benefited by that murder or because

he was unwilling to expose his only brother to disgrace and death, whatever it might be. Though the Muslim Law made allowance for release of a fratricide even without any extenuating circumstances, the very idea was manifestly outrageous to the normal sense of justice. At the instance of Mr. Law, the Council directed him to send Gerboo to Calcutta so that he might be transported to Penang.²²

In December Hewett, magistrate of Hijili, pointed out the impropriety of the respective punishments of two dacoits. Bellie Pundit, an ordinary dandi (boatman) serving a sardar dacoit, was to receive 39 stripes and remain in confinement, while Ramcharan Koringa, a sardar dacoit, was to be released simply on receiving 39 stripes and giving a muchalka and a security for future good behaviour. Bellie Pundit's punishment was enhanced to transportation to Penang. Hewett, however, recommended the transportation of Ramcharan Koringa instead of Bellie Pundit who was definitely less notorious. His arguments satisfied the Council, who accordingly sent Ramcharan Koringa to Penang.²³

One practice which made matters worse was that the release of a prisoner even after serving a sentence was sometimes conditional upon furnishing a security for his future good behaviour. On 23 July 1788, Hewett sent for the Council's perusal, the Naib Nazim's sentences on three dacoits. All the three were to have 39 stripes and while two of them were to be confined "during pleasure," the third one was to be enlarged after six months on giving a security for his future good behaviour. After a month Hewett again forwarded the fatwas on thirteen dacoits (20 August). For the same crime of dacoity, one Luchoon Koringa was to be hanged and twelve others were to get, first of all, 39 stripes, then some were to be confined at pleasure and most of them were to be released on giving a muchalka (written agreement) and a jamin (security) for future good behaviour. The Council were not yet prepared to change this sort of punishment and confirmed these sentences.²⁴

But the Hijili magistrate pursued the matter and on 23 September again pointed out that most of the dacoits of the local

jail were sentenced to remain in confinement until they gave ample security for their future behaviour. No sufficient security was likely to be offered for a set of dacoits, particularly when their detention precluded the chance of making personal solicitations. Being unable to fulfil this condition, most of them suffered life imprisonment. It also appeared from a list prepared by the Hijili magistrate that of the thirty-five prisoners charged with theft, sixteen were to remain in perpetual confinement. The rest were sentenced to short term imprisonments varying from 15 days to 10 months, but to be released only on giving suitable security for their future good behaviour. In addition to their prison terms, twenty-nine of them were to receive 39 and one 25 koras. This time the Council did not remain passive and requested Cornwallis to write to Reza Khan to release these thirty-five persons on the expiry of the fixed terms of their imprisonment without obligating them to find security.²⁵

The prolonged correspondence that took place between the English Government at Fort William, the Naib Nazim at Murshidabad and the Commissioner at Bakarganj during the latter half of the year 1789 throws a lurid light on the penal administration of those days.²⁶

In a letter to the Remembrancer of the criminal courts on 15 July 1789, Lodge, Commissioner of the Sundarbans, made some serious allegations about the corruption prevailing in the criminal administration of Bengal. Referring particularly to the cases of Ratan Das, Muhammad Ali and Muhammad Hayat he made a straight attack on the system which had for its object "the screening of the opulent delinquents and condemning poor rogues in order to support an appearance of justice."

Although a servant of the Nizamat, Muhammad Hayat, son of Fakir Muhammad of Doomki (in Azimpur pargana), was the terror of South Bengal. Many sardar dacoits paid tribute to him. In January 1789, Lodge sent him to the Faujdari Adalat of Bakarganj, but no sentence was passed for several months. As for his antecedents, it appeared that though arrested twice before, he had managed to escape, thanks to "that ingredient which is found to soften the rigours of justice

at the Durbar." On this occasion also, Lodge suspected that Muhammad Hayat's punishment would not be in any degree proportionate to his crimes and that the sentence on Muhammad Ali was only a prelude to what was to follow as regards Muhammad Hayat.

Muhammad Ali also held an office of great trust as a girdawar (inspector of police). The depositions of four persons against him which were circumstantial and consistent, tended to prove that he was the sardar of a gang. Many dacoits were under his control and gave him a large share of the spoils. Six robberies including one with murder were credited to him and his share of the booty amounted to several thousand rupees. On one occasion, he received Rs. 6,000, while at least twice again he took one-fourth of the plunder at Rs. 2,000 every time. According to the Naib Nazim's decree, he was to be imprisoned for two months and thereafter to be released under security and a muchalka.

On the other hand, two of a party of dacoits, Sonaram Nag and Bejuram Das, were sentenced to death for having led a small party in two boats and made two attacks. At Purana they only obtained a few pieces of cloth and metal utensils, while at Maupassa they were driven away before they could get anything. And Ratan Das who was merely hired by the aforesaid party of robbers as a dandi at the feast of Dusserah and had received for his labour a piece of cloth not exceeding the value of Rs. 5, was charged with complicity in the dacoity. The depositions of Bejuram Das, Sonaram Nag and Chandu Bari absolved him of any association with them in their robberies. The only evidence against him was the two statements of another prisoner Panchuram, which were however self-contradictory. Strangely enough, even this evidence induced the Naib Nazim to sentence Ratan Das to imprisonment during pleasure with 39 stripes. This punishment was actually equivalent to life imprisonment since the prisoners so sentenced were seldom released.

Lodge attributed the glaring disparity in the above trials to the capacity of the leaders of gangs to satisfy the venality of the officers of justice. Following his complaint the Council

desired the Naib Nazim to revise the proceedings of the trials of Ratan Das and Muhammad Ali as also to pass an early sentence in the case of Muhammad Hayat. At the same time Lodge urged the Daroga to send the relevant proceedings to the Naib Nazim.

It was about this time (26 August 1789) that Lodge came to discover that a deposition of Muhammad Ali refuting the depositions of the witnesses concerned was inserted in the margin of the copy forwarded by the Daroga to the Naib Nazim. On comparing this copy with the one kept in his office, he found that it had been omitted in the book the Daroga gave him. In this deposition, Muhammad Ali denied all charges against him and stated that since he had to seize a great many dacoits and their effects as girdawar for the last two years, these dacoits from motives of revenge, had given false evidence against him. There was some plausibility in this explanation, yet it could not invalidate the depositions of seven persons against him. It was the usual process with Lodge to have the proceedings of the criminal court copied by his munshis from the Daroga's own book. When brought to his office, these copies and the Daroga's book were examined by two other munshis. All these three munshis declared that at the time when the proceedings of the Commissioner's office were copied and examined, no such reply from Muhammad Ali was on record and this was evidently incorporated later on without Lodge's knowledge, in order to secure the rescue of Muhammad Ali. The Governor-General intimated the Naib Nazim about the discovery of this culpable act of the Daroga Muhammad Yusuf and ordered his removal from that station. A new Daroga was then deputed by the Naib Nazim and directed to inspect the papers forwarded by the dismissed Daroga and make a fresh investigation into the cases under dispute.

Reza Khan now wrote to the English Government to explain the nice distinction between the trials of Ratan Das and Muhammad Ali. He showed that Ratan Das acknowledged his association with the dacoits, while Muhammad Ali denied all charges against him and was punished only because he was not

above suspicion. Between the confession of an accused himself and the denial of the accused in the face of adverse statements of the persons who were suspects themselves there was, in Reza Khan's opinion, certainly a difference. It was the insufficiency of the evidence of dacoits that was one of his reasons for delaying the sentence on Muhammad Hayat.

The superficiality of the Naib Nazim's arguments was vehemently criticised by Lodge. He observed that the evidences of the parties concerned, be they thieves and dacoits, had never been deemed invalid and the Naib Nazim's sentence sufficiently proved their weight. To depreciate the full circumstantial evidence merely because such evidence was given by dacoits was, said he, absurd and dangerous. It was common knowledge that the office of girdawar was a dangerous delegation of authority which was often used for the purpose of oppression. It was also unimaginable that the Naib Nazim and the local Daroga could remain ignorant of the infamous character of Aga Reza, the Faujdar of Dacca-Jalalpur division, under whom Muhammad Ali was a girdawar. Lodge even strongly suspected Aga Reza himself to be the head and protector of one of those gangs which had committed numerous ravages and murders in the province. At that time Aga Reza was an absconder. No steps had yet been taken against him and no observation on this point seems to have been made by the Daroga. Lodge, therefore, condemned the Naib Nazim for giving his sanction to the most unsound decrees "with a lightness unbecoming the dignity and importance of his office."

In Muhammad Hayat's case, the depositions of as many as forty persons were recorded. These proved that he was guilty of cold-blooded murders along with other enormities and used to support bandits in their depredations for a number of years and share largely in their plunders. These facts were corroborated by the statements of Muhammad Husain, Nabi Khan and Ghaus Khan, who had been condemned to death in consequence of their confessions. Since that part of their confessions which concerned themselves had been deemed true by the Naib Nazim, surely there was no reason to reject what related to

Muhammad Hayat, particularly when it was known that they had no grudge against him and had given their statements before his arrest. These proceedings had been transmitted to the Naib Nazim seven months ago and yet he could not come to a final decision.

Towards the end of October 1789, Lodge received the Naib Nazim's orders on Muhammad Hayat, his Diwan Rammohan and Muhammad Ali. They were sentenced to imprisonment for the time being. The new Daroga was to ascertain their character from the reports of the local people. These orders appeared to Lodge to be totally inexpedient and the delay involved in carrying them out was explained by him as only a "colourable attempt," either to afford those criminals a chance of escaping in any manner or to furnish the Naib Nazim with some trifling plea to mitigate their punishments.

At his instance, Reza Khan was asked again to expedite the revision of the trials and transmit the proceedings with his decrees to Lodge without any delay. Lodge was also desired to suggest a suitable punishment for Muhammad Hayat. In his reply of 30 December, Lodge conveyed his firm opinion that the crimes of Muhammad Hayat merited death. But considering that the innumerable evils associated with the transportation were far more efficacious on the minds of the Bengalees than the common spectacle of gibbet, he prescribed the sentence of transportation with the confiscation of his landed property. The next day was received also the Naib Nazim's letter which stated that since upon the evidence of dacoits and thieves, these prisoners could not be capitally punished according to the law, he recommended the sentence of perpetual imprisonment.

In the meantime, Lodge had brought another case to the notice of Government (16 October 1789). It appeared from evidence that the accused Ainuddin Sikdar was an influential talukdar and a sardar dacoit and was actually concerned in several robberies. While several dacoits of his gang had suffered death, he was sentenced merely to two months' imprisonment.²⁷ On Lodge's representation, the Council instructed the Naib Nazim to order the retrial of Ainuddin's case. Although in

the interval, the four principal witnesses against the accused had been executed and his agents had fled from that part of the country, the proofs that were still procured fully substantiated the said dacoit's guilt. At the recommendation of Lodge, Ainuddin was sentenced to perpetual imprisonment (9 December 1790). His lands were to be confiscated and disposed of at a public sale and his relatives were not to be permitted to become purchasers.

On 20 January 1790, the Council finally deliberated on the cases of Ratan Das, Muhammad Ali, Ram Mohan and Muhammad Hayat and reconsidered the case of Ainuddin. They adopted a *via media* of the recommendations of Lodge and the Naib Nazim. Directions were given to the Naib Nazim to pass the sentences of perpetual imprisonment upon Muhammad Ali, Rammohan and Muhammad Hayat and to enlarge Ratan Das, unless any further accusation was brought forward against him by Lodge.

In the cases of Muhammad Hayat and Ainuddin, the orders for perpetual imprisonment were enhanced to transportation to Prince of Wales' Island, and the Naib Nazim was asked to deliver them to Lodge for transportation at the earliest opportunity. Their landed property was confiscated and sold, their heirs being precluded from becoming purchasers.²⁸

In January 1790, Pye, magistrate of Twenty-four Parganas, forwarded to the Council a list of five sentences of mutilation, passed by the Naib Nazim in certain cases of burglary and theft. Three of the convicts, Banchharam Chaukidar and his two sons had committed a burglary for which they were to forfeit their right hands and left feet. The other two—Bairagi Sardar and Tanu—were thieves. Both were to have their right hands cut off if the complainants chose; of course, each had an alternative punishment. The Council intended to alter these sentences and directed the Daroga of Chitpur Adalat to stay the above sentences.²⁹

Some months later, a peculiar case was brought to the notice of the Governor-General and Council (24 June 1790). Two prisoners of the Faujdari jail at Gaya, Mungaly Khan and Assud

Khan had been convicted of the murder of Nawaj Khan. The Naib Nazim ordered the culprits to pay the price of blood to the heirs of the murdered person. Then Pranow, wife of the deceased, executed a Razinama to declare that Mungaly Khan, being unable to pay a pecuniary compensation, had made over his only son to her as a slave for life and that Assud Khan had given her as price of blood his share of a village. She, therefore, withdrew her claim against them. The other two plaintiffs, brothers of the deceased, also remitted their claim in consideration of the poverty and distress of Mungaly Khan and Assud Khan. The Naib Nazim to whom these particulars were submitted ordered their release. The operation of this order was suspended by Seton, the magistrate of Gaya, who immediately represented to Cornwallis the injustice of allowing an innocent young man to become a lifelong victim of his father's crime. The Council then advised the Naib Nazim to reject this cruel offer of Mungaly Khan and to exact from the latter the proper amount of compensation by the customary process.⁸⁰

On 9 April 1790 the Burdwan magistrate also forwarded the abstract of a local trial in order to point out the impropriety of "Mahomedan punishments" and convince the Governor-General about the necessity of making a general revision of the entire penal law. In consequence of a robbery in the house of Panchananda Sarkar of Baleah pargana in Burdwan, entailing the total loss of Rs. 29,843, no less than sixty-two people were arrested by the local thanadar. Of them sixteen were released by the magistrate for want of proof and forty-six committed to the Faujdari jail to stand trial. As many as thirteen persons died in the jail before their trial was completed. One person was released by the Daroga for want of proof and the proceedings of the rest were transmitted to the Naib Nazim. According to the Naib Nazim's sentence of 14 March 1790, fifteen prisoners were to lose their right hands and left feet, ten to have 39 stripes each, in addition to imprisonment during pleasure and the other seven were awarded 39 stripes with confinement for four months.

Two features here deserve special notice. Firstly, different punishments were inflicted upon persons guilty of the same crime. Penitent prisoners were doomed to severer penalties while those who did not confess were awarded only a slight corporal punishment, despite equally strong proofs against them. It was only natural that a criminal aware of this distinction would surely endeavour by denial to escape almost with impunity. Again, 39 stripes appeared to have been the usual punishment prescribed indiscriminately for different crimes. Only a few of these stripes, if forcefully administered, were enough to cause the death of a person. In practice, however, flogging was rather mildly done with the result that the criminals regarded it with indifference and even submitted to it with alacrity. Thus by the excess of the punishment awarded, its very spirit was totally thwarted. "Let punishment", pleaded Mercer, "be as lenient as your Lordship pleases, fixed with the mildest discretion on every species of crimes, but let it be positive."³¹

As for the Faujdari jails, they were at that time unusually crowded with prisoners numbering several thousands and this was occasioned mainly by a chronic delay of trials, the careless sentences of judges without reference to merits of the causes, indefinite and perpetual imprisonments and lastly, the inefficiency of police arrangements leading to a gradual increase of depredations.

The Judicial Regulations of 1787 merely enjoined the magistrates to provide for separate blocks for prisoners under sentence and under trial. Magistrates were also required to inspect the jails at least once a month. But no notice was apparently taken of the wretched condition of the jail buildings. No provision was made either for their thorough repair or for the erection of new ones.

All jails up to that time were thatched and built of straw, mud or bamboo and, therefore, very liable to be burnt down by fire or blown up by storms. Sometimes those of the magistrates who invited the Governor-General's attention to the deplorable condition of these over-crowded, unhealthy and insecure cutcha jails, were individually permitted to repair them

or build new ones at the least possible expense. No general plan appears to have been worked out for building strong pucka (brick) jails, perhaps because the prisoners were still under the direct charge of Darogas and their ultimate responsibility lay with the Naib Nazim. Also, from motives of strict economy the English Government felt no urge to disburse the heavy amount needed for pucka jails in all the districts. The initial expense of building a cutcha jail was negligible. For instance, the Tirhut magistrate's expense was only Rs. 271-2 for building a cutcha jail with separate blocks and mud walls, whereas the Chatra magistrate incurred Rs. 3,827-3-6 for constructing a pucka jail.³² It is to be noted, however, that although the initial expense was low, the cutcha jails needed constant repair and were, therefore, very expensive in the long run.

On 25 August 1788, the Remembrancer of the criminal courts recommended some additional Faujdari regulations. He stated that whenever repairs were necessary at a Faujdari jail due to either decay in the original building, or accidents, such as fire, inundation etc., the Daroga should, in the first instance, make his report to the district magistrate along with an estimate of the expense. After the magistrate had given his approbation, it was to be forwarded to the Naib Nazim who was to prepare as before a kubz and submit it to the Governor-General. Thereafter the magistrate was required to report to the Remembrancer about the completion of all necessary repairs.³³

Towards the middle of 1789, a definite improvement was made in the mode of remitting the diet money of prisoners to the mofussil Darogas. Formerly, the Naib Nazim used to prepare kubzes for that purpose and forward them to the Remembrancer. The latter on getting the sanction of the Governor-General used to return them to the Naib Nazim, who was then to receive the money from the collector of Murshidabad and distribute the same among the different mofussil courts. This process unavoidably took much time. Sometimes it happened that the wretches in the Faujdari jails were in want of the bare necessities of life, owing to their allowances

being in arrears for several months together. On 17 June 1789, the Council therefore resolved to discontinue the existing mode of issuing diet money. The magistrates were directed to pay it monthly to the Darogas of Faujdari Adalats within their respective jurisdictions.³⁴ Barring these measures, no substantial action was taken for the betterment of the condition of Faujdari prisoners for some years following the promulgation of the Regulations of 1787.

At Rajshahi in 1787, a newly built jail was blown up by the first gale of the year and even the one that was thereafter erected had to be repaired within a month. How ill-built was that jail can thus be easily guessed. The cost for the combined Diwani and Faujdari jail there was merely Rs. 625. This sum was sanctioned. But the magistrate was ordered not to make any disbursement of this nature in future without the express sanction of the Governor-General-in-Council.³⁵

In 1789 a disastrous accident befell the Faujdari jail of Chaplia. On the night of 13 April, a fire suddenly broke out and spread so rapidly and violently that inspite of every possible exertion to extricate the prisoners, two of the guards and 211 out of 244 prisoners perished in the flames. The entire prison, store-house and the office of Daroga were all burnt to ashes.³⁶

At Sylhet, there was no Faujdari jail in the proper sense of the term. The convicts under sentences of death or perpetual imprisonment used to be kept in a hired straw house and the prisoners committed to jail by the magistrate for trifling offences were kept in a small mosque which was excessively damp and unhealthy. The Daroga applied to the magistrate for a kachahri and a jail. On 23 April 1788, the Council authorised the magistrate to build a jail and wanted the expenses not to exceed Rs. 700, "it not being the intention of the Government that they should be permanent or therefore made of expensive materials." No jail, however, seems to have been built for the time being. The Remembrancer was informed by the magistrate on 19 September 1788 that many of the Faujdari prisoners had lately died. His impression was that the

lowness of the spot on which their house of confinement stood had occasioned their illness. This time Willes was given permission to erect a pucka jail.³⁷

The Faujdari prison of Murshidabad district was very small, old and dilapidated. Considering the number of prisoners, the accommodation was very insufficient and, therefore, ruinous to their health. Besides being in the midst of the city, a very improper place for the purpose, the premises so much lacked in space that the prisoners who were locked up at night had scarcely room to stir and the stench of their bodies caused by hot weather was intolerable. The only thing which kept these people alive was frequent washing. About the end of 1788, one man agreed to sell a pucka house with many rooms and a spacious ground. Its price was Rs. 8,000 and an additional amount of Rs. 1,000 would be required to repair it entirely. Reza Khan sought the permission of the Governor-General in this matter. Burges, the magistrate, also recommended the proposed house as suitable for a new jail. Sanction was then accorded to the Naib Nazim for the purchase of the house and necessary repairs (31 December 1788).³⁸

In October 1789, the Birbhum magistrate reported that the local Faujdari jail was full. The number of prisoners then was seventy-six and many of them appeared to him to be deserving of more condign punishment than being simply confined and well-fed in jail. Their number, observed the magistrate, was daily increasing and unless additional buildings were constructed, they would surely smother each other.³⁹

The unwholesome state of the overpacked Faujdari jails caused premature death of many a prisoner. Out of forty-six prisoners sent to the Faujdari jail by the Burdwan magistrate between 3 June and 8 December 1789 to stand trial for a robbery, no less than thirteen died in jail before the arrival of the Naib Nazim's sentences on 23 March next.⁴⁰

Early in 1788, on inspecting the Faujdari prison of Gaya, Law declared it unfit in every sense and wanted the Daroga to make an estimate of the construction charges for a pucka jail.

The Daroga's estimate amounted to Rs. 3,500. The Council gave the permission to build a pucka Faujdari prison (15 August); but instead of allocating a specific sum, they requested Law to build a strong jail at the least possible expense. Even after all this, due attention does not seem to have been given to the security of jails. At various times prisoners made attempts to escape by cutting through the wall. On the night of 27 October 1790, a very daring and successful attempt for escape was made by the convicts of the Gaya jail. The jail wall had been damaged by the unusually heavy rain of August. The sentinels failed to stop them and in the scuffle that ensued, one sepoy was killed and some were injured. Of the prisoners, seven were killed and thirteen wounded. But one hundred and thirty-two persons fled, and only twenty-two were rearrested by the end of that month, inspite of the best efforts of the magistrate.⁴¹

By the middle of 1789, Cornwallis had come to the conclusion that "all regulations for reform of that (Faujdari) department would be nugatory, whilst the execution of them depends upon any native whatsoever." Anxious as he was to afford a speedy remedy to the abuses, "so disgraceful to government, so ruinous to commerce and indeed destructive to all civil society," it still appeared necessary to him to act with great caution.⁴²

In November 1789 he, therefore, circulated nine queries to all the district magistrates and called for their reports upon the diverse aspects of criminal administration of Bengal, namely, delays in trials, adequacy of the Mahomedan Law, efficacy of the prescribed punishments, treatment of prisoners, condition of the judges and other officers, and the inefficiency of police arrangements.⁴³

The replies of magistrates showed how widespread and deep-rooted were the evils which corroded the entire system of penal administration. "The power in the plaintiff to withdraw the prosecution, the dependence of the expounders of the Law, the corruption of necessitous officers, the inadmission of equality of testimony, the frequent disproportion of sentences to

crimes, the horrid custom of torture and impalement, the ill-judged punishment of mutilation, the absurd frequency of perpetual imprisonment, the insufficiency of salary to support the dignity and reward the integrity of the judge"⁴⁴—all irresistibly impelled the magistrates to plead for remedial interposition. Their reports pointed to two obvious causes for the prevailing evils : the anomalies in the Muslim penal law and the gross defects in the constitution of criminal courts of these provinces.

The adequacy of the Mahomedan Law for the suppression of crimes appeared to be a moot question which struck at the very fundamental of the criminal judicature of Bengal and stamped its character.⁴⁵ On that question, most of the magistrates strongly condemned one or many of the features of the Muslim penal law and recommended amendments thereof. It was only the magistrates of JESSORE, Murshidabad city and Sylhet who did not see any utility of altering that code. Burges of Murshidabad city was impressed by its capacity for striking terror and Willes of Sylhet said that the precise execution of the laws whatever they might be was the direct means of the suppression of crimes.⁴⁶

The prosecutor in a murder case was given the privilege of pardoning. Homicide was allowed by the Islamic Law to be compounded by a pecuniary compensation to the next of kin of the deceased and obtaining from him a Razinama. At Chittagong five men were once convicted of robbery and murder. The complainant entered into an agreement with the culprits, received the sum of Rs. 80, executed a Razinama and saved them from the gallows.⁴⁷ At Rangpur, a pardon could readily be bought for rupees thirty and often for twenty and even ten. One Chamru mortally wounded a woman on the head and was committed to the Rangpur jail (7 June 1788). The woman was given money for the necessary medical aid, but died a few days later. The culprit was prosecuted by Doman, the grandson of the deceased and obtained a Razinama for Rs. 22.⁴⁸ Thus was justice "weighed in golden scales." This privilege frequently involved the injured party in an embarrassment. Perplexed by pity at the agony of the interceding

relations, overcome by penury and temptation, and afraid at the same time of the anger of the interested Daroga should his mediation fail and of the revenge of the punished criminal or his relatives, the prosecutor generally lost his resentment in the relief of "pecuniary expiation."

Thus in its eagerness to afford redress to the aggrieved party, the Islamic Law left the fate of a murderer "to the caprice, venality or indifference of a prosecutor." This provision might have served very well the primitive Arab society, but its inconsistency to natural justice could not but vex the magistrates who strongly recommended its abrogation.

Not only in the cases of homicide but also in those of stabbing, maiming and wounding, the Razinama of the victim, in case of his or her survival, put a stop to further process. Nor was an accomplice punished with the capital sentence for assistance in the very act of murder. In the absence of a prosecutor or heir to the deceased, it was for the Hakim to determine whether the crime was to be treated as capital or not. Besides a parent did not suffer capitally for the murder of his or her own child, nor a master for that of his slave.⁴⁹

Another feature was the absence of positive modes of determining punishment. Willes discussed the contrast with the English Law. In England, there was scarcely a crime for which the law had not provided some particular punishment. Judges had only to follow the letter of the law. Mahomedan Law on the other hand left much to the discretion of the judges.⁵⁰ Defect lay also in the reading and application of the law. The majority of the people were Hindus and totally ignorant of the Quranic language. Few indeed of the Muslims were proficient in Arabic. The Quran was therefore often incorrectly copied and only partially studied. There were four schools of the Sunnis by whose rules criminal justice was administered. In each sect the opinions of different authorities were very dissimilar, some of them bearing divergent constructions and lacking in perspicuity. Much misinterpretation and abuse arose from the sense which the Bengali lawyers chose to ascribe to the Quranic Law on points submitted to them. When the judge

was softened by gold and disposed to favour a criminal, he could easily select from a variety of contradictory opinions that very interpretation which would set aside the evidence or disprove the crime ; and the magistrates wondered at the different sentences passed on offences of equal magnitude. Justice was sometimes too lenient as the release of a convict "without any reason assigned", while at others too severe, as the cutting off of a limb.⁵¹

This leads us to one odious feature of the Muslim Law—the mutilation.⁵² Graham gave a graphic picture of this barbarous punishment. The culprit was tied down. The executioner took a blunt hatchet and hacked off the hand by the joint of a wrist and the foot by the joint of an ankle. The bleeding stump was immediately immersed into a pot of boiling ghee in order to stop effusion of blood from the arteries.⁵³ Many a criminal on arrest was found to have already forfeited one and sometimes two of the limbs. The mischievous consequences of this practice were too obvious to be overlooked. It precluded the criminals from all possibility of adopting honest means for their future livelihood and thus prevented their reformation. It was indigence that obliged them to take to their former habits of inequity, and "the crimes", declared Mercer, "they may be subsequently guilty of are in effect crimes committed by the state."⁵⁴

Muslim law of evidence also proved very unsatisfactory. Very direct proof was required in all cases and circumstances which set aside evidence were numerous. Due to difficulties of proof, the law was not usually enforced. If there were several witnesses and one did not agree with the rest in any matter of evidence, the prisoner was either let off or his punishment was mitigated. The evidence of women and the accusations of accomplices in capital cases were of no validity. Again the evidence of one Muslim was considered equivalent to that of two Hindus, "a custom which originated in victorious bigotry."⁵⁵

In the full vigour of the Mughal rule, summary justice as also sudden and severe punishments made up the defects of the Quranic Law and secular courts did not think themselves

bound to observe in all cases either the letter of the law or the expositions of its commentators, both of which were frequently found inconsistent with natural justice. And therefore a distinction was made between their written law and "the Law of nature or common sense which occurred in the secular tribunals and had the executive power on its side."⁵⁶ But unhappily placed as they were in an age of decadence, these magistrates could see only shocking abuses of the Nazim's power. It was no wonder, therefore, that one magistrate declared the Mahomedan Law as entirely defective and calculated for an arbitrary power. In his opinion, one of the first points requiring amendment was the practice of leaving all serious offences to "the will and pleasure of the ruling power."⁵⁷

The alarming deterioration of the law and order throughout the country was, however, attributed more to the abuses prevailing in the courts of law than to the defects in Muslim Law itself. Reports of the magistrates threw a flood of light on many evils resulting from the existing constitution of criminal courts.

One evil of the greatest magnitude was the delay of justice.⁵⁸ The prompt execution of the laws is the essence of criminal justice. But in Bengal of those days the period of detention before trial appears to have been very uncertain. The minimum, in the opinion of the Dacca magistrate, was two days only, whereas the maximum period indicated by the Purnea magistrate was twelve years. Mr. Bird of Chittagong mentioned instances of sentences not being passed until after six years from the commitment of an accused. The Purnea magistrate observed that the average period was one year for causes determined by the mofussil Daroga and two years for those referred to the Naib Nazim. At Purnea, four persons Bhagwan Gheer, Hurdut Chand, Ramkissen and Ghanashyam were taken into custody on 13 September 1780 on a charge of dacoity and sentenced to be released on 13 May 1788 on the expiry of about 8 years. In 1780 one Muhammad Reza was committed to the Faujdari jail of Dacca on a charge of murder. His case was not referred to the Nizamat Adalat before he had been eight years

in jail. Since then two years went by, but no sentence was passed and he remained in prison.⁵⁹

The much complained of dilatoriness of criminal justice sometimes resulted from the collusion between the prisoner and the officers of justice, but more often it depended upon various other circumstances. In his zeal to bring all criminals to condign punishment, the district magistrate crowded the Faujdari jail with a multitude of prisoners. He himself could try only very petty offenders. Others remained in the custody of the Faujdari Daroga who in his turn had to refer all cases of serious nature affecting life or limb to the Sadr Nizamat Adalat. The Daroga could decide only simple cases. If he was sick or absent, the court remained closed and was seldom run by a deputy. It was a difficult task to prove criminality and specially so in a case of complicated nature. The injured party was sometimes disinclined to prosecute or afraid to identify the real offender. The witness was frequently absent from the court and the expounders of law, the Qazis and Muftis, procrastinated in the consultation of the code and in deliberation and decision. Moreover, the transit of proceedings and decrees between the Sadr Nizamat Adalat and mofussil courts inevitably took much time in those days of difficult communication. In Murshidabad, the proceedings sent up monthly for trial accumulated. With all his abilities and attention, Reza Khan could hardly revise all those reports. On some occasions again, he referred back the cases for rehearing or obtaining more satisfactory evidence. Even when a prisoner was at last acquitted of all charges, he had already suffered the consequences of a long and painful confinement. On the other hand, if he was convicted, the delay vitiated the ends of justice. It frequently happened that the aggrieved parties weary at the length of trials were obliged to accept Diyat instead of waiting for severer punishments. Sometimes in view of the losses sustained by them "by attending slow process of designed delays in the investigation of the Nizamat Courts", they discontinued "further prosecution considering their hopes of redress as desperate."⁶⁰

Another glaring feature was the disparities of punishments. The degree of punishment for murder and robbery generally varied between 39 stripes, imprisonment for a short time, imprisonment "during pleasure" (for an indefinite period), loss of the limbs, and death. The magistrates observed that very few murderers and dacoits received the death sentence.⁶¹ Except in cases where the prisoners were either old and notorious offenders or had been more than once pardoned, mere dacoity and robbery when unaccompanied by any still more atrocious crime, were not considered as capital offences. Only one robber was hanged after Leslie's taking charge of Ramgarh, though numbers had deserved it. Merits of criminal cases, observed the Commissioner of the Sundarbans, were very little, if at all, considered in awarding sentences.⁶² By far the most important factor that helped a murderer to escape the death penalty was, as has been noticed, the practice of obtaining the Razinama by making large gifts to the next of kin of the deceased.

A special emphasis was laid by the eminent lawyer, Abu Hanifa on the method employed for homicide while the intention of the murderer was not given proper consideration. In consequence of this fallacious distinction, instances were numerous in which murderers, though convicted, were not punished with death. A Rajput, Jawahar Singh by name, was convicted of murdering Shyamal and was executed, because "the murder was committed with a sword." On the other hand, one Jechoo Dowry who killed Mansa was only imprisoned till he should make pecuniary compensation to the relatives of the deceased. The lenity was ascribed to the commission of the act with a stick only. Again, one Karimuddin who had poisoned Amir was condemned to perpetual imprisonment only, for he had merely mixed poison with the drink of the deceased, but did not force him to take the poisoned mixture.⁶³

Other anomalies also were brought to light. For robbery, burglary and dacoity, the common punishment was confinement and flogging. As for flogging, the usual prescription was 39 stripes which, if effectually applied, would occasion certain death. But as it was then administered, it came to be rather

a matter of ceremony than real punishment.⁶⁴ Theft was sometimes punished with loss of limb. In 1789 Kapur Chand, Tanu and Jitu, convicted at the Bhagalpur Adalat of robbery, were sentenced to imprisonment only, while their accomplices, Hardev and Kashi, were condemned to lose their hands.

Perpetual imprisonment was also a common punishment. The lives and labours of a number of men were thereby lost to the community. Many perished from the unwholesomeness of the prisons or contagious diseases or some accidents. Some others, of course, found out opportunities of escaping and resuming their former malpractices.

But the most common of all punishments seems to have been the confinement "during pleasure" along with 39 stripes. It was awarded indiscriminately in the most dissimilar cases. Its very indefiniteness helped Reza Khan to dispose of the cases without examining minutely the circumstances of the cases. In the case of Chittoo and Punnahoola of Bakarganj, dacoity was committed with murder. The prisoners themselves confessed that they plundered seven boats belonging to Gregory and committed other robberies in the rivers and that Punnahoola killed an Englishman. Strangely enough, even after such confessions, no question whatever was put to the prisoners and the Daroga finished his duty by reporting the whole case to the Nizamat Adalat only in a few lines. The Naib Nazim sentenced them to 39 stripes and imprisonment during pleasure.⁶⁵ The same punishment was inflicted on Murdun Sing of Burdwan, although many dacoits on arrest deposed that they were his employees and had committed robbery under his orders and that with him they had also deposited the stolen goods. And Murdun Sing himself voluntarily confessed a murder at Burdwan. Five men of a gang of dacoits who had looted the house of Lakshmiram Mondal of Sorah and fatally wounded two of the village guards were also sentenced to 39 koras and imprisonment during pleasure.⁶⁶ Among 278 sentences of the Bakarganj Adalat no less than 154 were for confinement during pleasure and in Lodge's opinion, two thirds of this number deserved to be released on giving security for future good behaviour. During his commission

in the Sundarbans, he did not find any one being released from the local jail, who had been once sentenced to imprisonment during pleasure. This punishment was open to objection from many points of view. A victim of this sentence had to remain in prison for life, totally neglected and forgotten. If any one ever did obtain release, it was only by bribing the Daroga or other government officers.

This brings us to that wide-spread evil which created a gulf of difference in the punishments of the wealthy and indigent criminals. While a show of justice was maintained by meting out heavy sentences, even death, to the accomplices and the petty and subordinate offenders, gold softened justice and secured an easy escape for the opulent leaders of gangs. Lodge took great pains to expose how instead of striking at the roots of the evils by punishing the flagitious offenders, the Nizamat officers, including the Naib Nazim himself, tended to screen or even support them.⁶⁷ At Burdwan, Abhoy Charan Sarkar, a sardar dacoit and Kamal Ray, a patron of dacoits, were exempted from punishment on a security given by the Faujdari Daroga himself. The Daroga of Krishnagar was offered a sum equal to his three years' salary provided he would procure the release of an old criminal who had suffered confinement at other places, and obviously had saved his life by the same means.

The Faujdari jails were crowded with numerous criminals, whose maintenance proved to be a serious problem of the Government.⁶⁸ Divergent opinions were given by the magistrates about the plight of prisoners in these jails, covering their treatment, sanitation, accommodation and medical aid and some magistrates thought that these circumstances were not what they ought to have been.⁶⁹

At Burdwan a new jail was built and the old one thoroughly cleansed. The prisoners of that place were much better treated than they deserved. Their friends in the neighbouring jail of Birbhum were also kept peculiarly clean. They were mostly in good health and spirit. Prisoners at Bhagalpur were treated with lenity and their imprisonment was rendered as little tedious as possible. Bird had nothing but praise for the Daroga of

Chittagong who did what little lay in his power to alleviate their sufferings. Prisoners at Dinajpur and Jessore also were properly fed and tenderly treated. The Jessore jail was commodious, clean and located in an airy and healthy place. On the other hand, there were magistrates who left an unhappy note on the subject. The Faujdari officers at Bakarganj were unnecessarily severe in their dealings with the prisoners, denying these wretches even the comforts of shaving and washing which cost nothing. It was strongly presumed by the Commissioner that the allowances for their diet must have been considerably curtailed while passing through such hands. But that abuse had been corrected by the newly adopted procedure of paying those allowances through the collectors and the present quantum was sufficient. In Mercer's opinion, the transference of Faujdari jails to the immediate care and inspection of the district magistrates, would put a stop to the evils still continuing in prison administration. Among these evils were the custom of paying money by way of allowance which enabled the prisoner to spend its greater part in spirits and tobacco and secondly, the danger of prisoners escaping and renewing depredations on the public. Constant changes in every department and uncertainty as well had prohibited expenditure on public buildings. The jails at Gaya, Sarkar Saran and Shahabad were not at all satisfactory. They were too crowded and prisoners were exposed to infectious diseases. There were no separate apartments for the sick and those serving the sentence. The sick prisoners had no proper medical assistance and those whom strong suspicion had doomed to temporary confinement and whose trial might terminate in honourable acquittal, received equal treatment with the convicted criminals.

The condition of the officers of justice sufficiently accounted for much corruption in the criminal judicature. Due attention does not seem to have been given to this vast personnel on whose integrity and ability depended the good administration of the Nizamat. On the question of education and character of the officers of Adalats, opinions of the magistrates were again divided.⁷⁰ By education was generally meant a tolerable facility

in the Persian language with sometimes a knowledge of Arabic and in the case of a Qazi proficiency in the Muslim Law. Many of the magistrates admitted that the officers were well-qualified for their posts so far as education at least went. The Sylhet magistrate even said that they were in general superior in education to the Company's servants. On the other hand, the Tirhoot magistrate mentioned a Faujdar of his place who was perfectly illiterate and the magistrates of Purnea, Burdwan and Rajshahi did not exactly think that the judicial officers possessed the knowledge and integrity their offices required.

Connected with the question of education was that of the character and conduct of the officers, over which the magistrates were not on the whole happy. Most of them had a deep-rooted notion that hardly any one amongst the "natives" had a claim to integrity of character. In particular, the magistrates of Dacca-Jalalpur and Chittagong and the Commissioner of the Sundarbans strongly regretted that the lives of individuals or the suppression of crimes had been left in such unworthy hands and the last named officer claimed to have formed that impression from his twenty years' acquaintance with their character and conduct.

The common report, indeed, pronounced the judges to be venal. But in marked contrast with it can be produced the testimonials of some of the magistrates who had nothing but compliments for the Darogas of their districts. The magistrates of Midnapur, Dacca city and Bhagalpur were not in possession of a single proof to warrant any suspicion about their integrity. For fourteen years the Jessore Daroga had held his office with great credit to himself and satisfaction to all concerned. Full praises were also earned by the Darogas of Murshidabad, Birbhum, Nadia and Dinajpur. From the diverse remarks of magistrates it appears that the character and education of the native population in general were not the primary sources of the evils. The servants of the Nizamat should be judged in the light of the standards of their own age. They were neither better nor worse than many of the Company's servants. To condemn them all as corrupt individuals would

really be to minimise the complexity of the issue, since other factors are not difficult to trace.

One such factor appears to have been the insufficiency of the salaries of the officers of justice.⁷¹ For holding a disagreeable office carrying high responsibility and dignity, the Daroga received Rs. 100 as his monthly salary. The Qazi and Naib Qazi who were expected to have made the study of the Mahomedan Law the whole business of their lives were given only Rs. 65 and Rs. 35 respectively. The barkandazes were to be models of virtue on a pittance of Rs. 3 per month. Saiyid Ain Ali Khan, Daroga, and Golam Haidar, Naib Qazi of the Murshidabad Adalat received Rs. 300 and Rs. 50 respectively.⁷² But these were only exceptional cases. Sometimes it happened that even from their slender allowances, these officers were obliged to pay about 6 per cent as exchange batta. At Bakarganj, 25 per cent without exception and in some cases even 50 per cent of the allowances were deducted.⁷³

Obviously, these allowances were inadequate either for securing respect from the people at large or for keeping them above temptations and brought forth some adverse consequences for the state and society. Men of rank, education and integrity could not be persuaded to accept a laborious employment of "unprovided dignity", without authorized emolument and without even the prospect of acting with efficacy. The void thus created was often filled up by "ignorant, artful and unprincipled" men, "chosen from the dregs of the people". It was inconceivable, wrote Mercer, "that men of family and education will dedicate the whole of their time to so laborious and disagreeable an employment for the mere avowed salary (which cannot positively afford means of procuring more than a bare subsistence) unless some secret motive, some concealed view of advantage, some illegal perquisites, led them to an acceptance of a station where the reward is so disproportioned to the labour."⁷⁴

In view of these facts and also considering the numerous opportunities these officers had of benefiting themselves by shielding the notorious criminals, they should, pleaded the

magistrates, be given suitable allowances to keep them above corruption. Nothing had perhaps more contributed to the continuance of the dacoities than the belief entertained by the people in general, not without good grounds, about the corruption prevalent in the criminal courts. Dacoits believed that with a part of their plunder they could easily purchase impunity. Witnesses were reluctant to appear against them, for owing to the venality of judges they apprehended that their evidence instead of bringing the offenders to punishment would only displease the judges and involve the risk of losing their own lives or property. Nothing was, in the opinion of the Nadia magistrate, of so much consequence as the removal of such notions. In short, the consensus of opinion among most of the magistrates was that the salaries of Faujdari officers should be "such as to preclude the necessity of having recourse to mean subterfuge or a prostitution of their officers for a subsistence."⁷⁵

Even those scanty salaries were often paid very irregularly. Quite a number of magistrates stated that regular payment of salary to officers was more an exception than the rule, the salaries being usually five, six or eight months in arrears.⁷⁶ In course of payment of monthly establishment charges from the Company's treasury to the Nawab, there occurred an unavoidable delay. Salaries of officials were remitted to the mofussil areas by the Nawab, who had no regular channels for that purpose. At Rajshahi, the delay was attributed to its distance from Murshidabad, difficulty of procuring bills of exchange, absence of houses of agency, bankers, or shroffs and the risk and expense in bringing the amount from Murshidabad. At Chittagong, too there was a dearth of prosperous merchants who might supply bills of exchange. Similarly, in places like Birbhum, Burdwan, Jessore, Ramgarh and Gaya, to name only a few, irregularity of payment was a most regular feature.

For the inefficacy of the existing system of Police, the magistrates put the blame on the zamindars.⁷⁷ Lodge was convinced that zamindars of the Sundarbans were well-acquainted with dacoits and robbers of all descriptions and that they had it

absolutely in their power to discover and prevent any considerable number of people from assembling and making depredations by land or water. The magistrates of Dacca and Sylhet also had no doubt that no dacoits plundered without the knowledge or support of the zamindars or their men. Many zamindars of the Dacca district had with them from one hundred to two hundred persons, styled as nigahbans, who were kept immediately about their persons and were the terror of the ryots. From time to time they were sent out on the river at such a distance as would cause no suspicion against their employer. Besides these nigahbans, there were some dacoits from whom the zamindars took a regular chauth while others paid to the zamindars a certain sum for each trip and Willes asserted that in few instances the dacoits ever went in large parties without the zamindars being their protectors or sharers of their booty. Since his arrival in Bengal, he heard of repeated proclamations against the zamindars, but did not know of a single instance of any zamindar having suffered on account of depredations of dacoits, despite frequent proofs of their being instigators and coadjutors. Willes cited the case of Zulkudder Khan, zamindar of Bazu in Dacca. He had his part in the murder of seven or eight persons, and the dacoits under his protection were for years together terrors of the eastern districts and carried on their plunders unchecked.⁷⁸ It was also well-known that the gird-awars, thanadars and paiks who were under the immediate control of the zamindars seldom got half their dues owing to various tricks practised by the zamindars. Their salaries were never paid regularly. For their subsistence, therefore, they thought it necessary to plunder the country and shelter dacoits. None of them could be appointed without paying a sum of money to the zamindar. The taxes levied on them by the zamindars under the name of Salami obliged them to have recourse to all sorts of peculation and extortion in order to make good those payments in default of which they were superseded by the highest bidder.⁷⁹

Most of the magistrates held that if agreements with the zamindars for the maintenance of law and order were strictly

enforced, the abuses of the police administration would in a great measure cease. Keating of Birbhum suggested that in case of his failure to make good all plunders, a part of the lands of the zamindar should immediately be sold off. He went even so far as to recommend instant forfeiture of the property of every zamindar or landholder on conviction for harbouring criminals or conniving at their depredations. Some of the magistrates like Henckell, Mercer and Brooke felt that the most effectual means at the least expense to Government would be to place the sole control of the mofussil police in the hands of magistrates.⁸⁰ On the contrary, Willes was extremely averse to further power being lodged in the hands of the magistrate. The magistrates also urged the utility of maintaining establishments of swift and armed guard-boats and prohibiting the construction and use of the kind of boats the dacoits used.⁸¹ It is remarkable to note that river dacoities were at this period uncommon in Bhagalpur, Patna, Purnea, Rangpur, Sarkar Saran and Tirhut. Most of them were districts of Bihar.⁸²

Notes of censure were in some cases recorded on the remissness of Reza Khan himself. "A total reformation", declared the Dacca magistrate, "in the office immediately under Naib Nazim is also absolutely necessary, for there is certainly apparent partiality or neglect in many instances that have come to my knowledge." While commenting on the case of Muhammad Ali, the notorious sardar of dacoits who was allowed to escape with two months' imprisonment merely, Lodge accused Reza Khan of screening the principal offenders and giving his sanction to decrees "with a lightness unbecoming the dignity and importance of his office." As another instance of the Naib Nazim's inattention, he represented the case of Chittoo and Punnahoola and pointed out that had the Naib Nazim read or heard being read any of the causes on which he passed judgment, the circumstances of the murder of a European would have surely attracted his attention and he would have noticed the palpable neglect of the officers of the Bakarganj Adalat. But the fatwas had passed under his seal and signature without any such notice. "As Chief Magistrate," observed Lodge, "holding the most

important office under the Government his conduct in this instance wears a peculiarly ill-aspect."

The reports of the magistrates confirmed Cornwallis's notion as to the indispensability of a radical reform of the criminal judicature. But that was feasible only by correcting the imperfections of the Islamic Law and the constitutional deficiencies of the criminal courts.

Upon the question of competency of the English Government to amend the Islamic Law, Cornwallis had no hesitancy. "Being entrusted," he wrote, "with the Government of the country we must be allowed to exercise the means necessary to the object and end of our appointment."⁸³ Besides, from the precedents set by Hastings, he found sufficient legal recognition of the right in question. In 1772 alterations were made by Hastings in "the established Mahomedan Law" and judicature of Bengal, without any previous reference to the Nawab Nazim. The new Judicial Regulations were submitted to the British Parliament by the Committee of Secrecy⁸⁴ whose reports formed the ground work of the Regulating Act of 1773. Far from disapproving the reforms of 1772, the 7th section of this Act vested "the ordering, management and government of all the territorial acquisitions and revenues" of Bengal, Bihar and Orissa in the Governor-General and Council for such time as "the territorial acquisitions and revenues" would remain in the Company's possession. This clause appeared to Cornwallis to be legally sanctioning all necessary amendments of the criminal law of Bengal.

He therefore proposed modification of several flagrant provisions of the Islamic Law. If he did not at that time introduce a system of jurisprudence as perfect as he might have envisaged, it was because he did not deem it expedient to wound further the religious sentiments of the Muslims. Under the existing circumstances, he considered it the duty of the English Government "as rulers of the country" to see at least that the inherent defects of the Muslim Law were not augmented by its maladministration.

Referring to the magistrates' reports, Cornwallis explained the uselessness of leaving the control of criminal justice in the

hands of the Naib Nazim, Reza Khan. He also took into consideration the natural repugnance of a 'native' to any innovation in the prescribed rules and applications of the Islamic Law and resolved that the immense powers so long exercised by the Naib Nazim should not in future vest in an Indian or indeed any single person. He, therefore, recommended the abolition of the Naib Nazim's office and the reorganisation of the Sadr Nizamat Adalat as also of the mofussil courts so as to replace the Indian by English judges, leaving only the exposition of the law and some subsidiary functions in the hands of the Indian advisory and auxiliary staff.

In view of the collusion which had long subsisted between the zamindars and dacoits, Cornwallis admitted the futility of the clause in the engagements of the landholders and farmers, which made them answerable for the robberies within the boundaries of their estates. For the time being, however, he desisted from formulating any scheme for police reform. He hoped that the reports of magistrates together with the information which the judges of the proposed courts of circuit would occasionally supply, would in course of time enable the Government to frame necessary regulations for the Police.⁸⁵

On 3 December 1790, the Governor-Generals' plan of the Regulations was submitted for the Council's determination. Only one member, "wonderfully eccentric" and "poor honest" Speke, recorded his dissent, his objections being "insurmountable" "both in the point of policy as well as Justice." In the acceptance of the plan, Speke saw "an assumption, in fact, of the sovereign power in the fullest sense, not merely that of criminal jurisdiction but of legislation." He was firmly convinced that the Nizamat Adalat did not "possess even a colourable jurisdiction" and competent authority to decide any case affecting the life of a criminal.⁸⁶ The rest of the members approved the Regulations.

Under the previous Regulations the magistrate arrested criminals within his jurisdiction, decided cases of petty offences, and made over serious offenders to the Daroga. That arrangement was retained, with this difference that henceforth the

magistrate was to deliver the prisoners to the court of circuit. If the charge proved baseless, the prisoner was to be released, otherwise committed to prison or enlarged on bail for trial at the next sitting of the court of circuit. Bail was not to be granted in cases of murder, robbery, theft and house-breaking. On arrival of the judges of the court of circuit at his station, the magistrate was required to furnish them with lists of all persons apprehended, discharged for want of sufficient evidence, committed for trial, or on bail for trial. He was also to forward monthly to the "Register to the Nizamat Adalat" detailed reports about the different categories of prisoners, namely, those under the magistrate's charge before trial, convicted by the court of circuit, referred to the Nizamat Adalat or confined under sentence. He was to specify in these reports the names of prisoners, the crimes, punishments awarded, dates of their apprehension, commitment, death, escape or release as the case might be, and the name of the court of circuit where they had been tried.

As before, the British subjects on arrest were to be sent to Calcutta to be tried by the Supreme Court and other European subjects were amenable to the authority of the magistrates and the courts of circuit.

The responsibility of the magistrate was increased by vesting in him the superintendence of the execution of the sentences passed by the court of circuit and the Sadr Nizamat Adalat. To him, again, was transferred the charge of the jail and malkhana which had so long been in the hands of the Daroga of the Faujdari Adalat. He was enjoined to inspect the jail at least once every month and redress all complaints of ill-treatment against the jailer and other officers and to pay particular attention to the health and cleanliness of the prisoners. Separate blocks were to be allotted for each grade of prisoners. The Company's surgeon was to be called to attend to the sick prisoners.

The total monthly expenditure granted for the twenty-six magisterial establishments all over Bengal and Bihar amounted to Rs. 11,252. These establishments consisted of the muharrirs and "Akrajaut" of the kachahri, jamadars and chaprassis, the

staff for the jail and malkhana, together with the kotwalis of five stations.⁸⁷

Except in Hijili where a smaller staff would suffice, the jail and malkhana establishment was to consist of one mirdaha, thirty barkandazes, one "tabbeeb", one tazianabardar, one jallad and one "goarkund". The monthly sums of Rs. 122 and Rs. 70 were allotted for the jail and malkhana establishments of Tamluk and Hijili respectively. The remaining twenty-four stations were each to have Rs. 147 per month.

The monthly expenditure of Rs. 475 for the Kotwali establishment of each of the three cities of Murshidabad, Dacca and Patna, as granted by the Regulations of 27 June 1787, was not altered. Only two new establishments were now added—those of Rangpur and Bihar, costing Rs. 100 and Rs. 127 respectively. While the amount of Rs. 150 was fixed for the muharrirs and akrajaut of the kachahri in every district except Sylhet, the expenditure on the jamadars and chaprassis varied.

Far more significant than the superaddition of some new responsibilities to the magisterial duties of the collector was the substitution of the English for an Indian agency in the criminal courts, both in the Sadr and the mofussil areas.

The district Faujdari courts with their Indian Darogas were abolished. In their place were to be established four courts of circuit, one for the Patna Division of Bihar and three for Bengal, one each for the Calcutta, Murshidabad and Dacca Divisions.⁸⁸ Each court of circuit was to be superintended by two covenanted civil servants of the Company (denominated judges of the court of circuit), with a Qazi and Mufti attached to it as assistants. The executive business of the court was to be conducted by a "Register" (registrar),⁸⁹ another officer appointed from the covenanted civil service and assisted by munshis and other native officers. While the appointment and removal of the Qazi and Mufti depended solely on the Governor-General-in-Council, those of the munshis and others were left to the discretion of judges of the respective courts. For the purpose of holding half-yearly jail deliveries, the judges were to make circuits twice a year within their respective divisions, setting out

on 1 March and 1 October. They were to proceed to the headquarters of the district magistrates and remain there until all persons committed or on bail for trial had been tried and sentenced. After completing the circuits the courts were to sit at their divisional headquarters at the cities of Murshidabad, Dacca, Patna and Calcutta respectively, in order to try the prisoners of those cities.

The trials were ordered to be conducted in the following manner : after the charge and evidence against the prisoner, his defence or confession if any, were heard and recorded, the Qazi and Mufti were to write the fatwa and to attest it with the seal and signature. If it appeared to the judges that the fatwa was consistent with natural justice and conformable to the Mahomedan Law and the new modifications, they were to approve the proceedings in the terms of the fatwa, pass the sentence and issue the warrant to the magistrate to have it executed without further reference or delay. But the proceedings of all trials culminating in sentences of death or perpetual imprisonment and also those disapproved by the judges were to be referred to the Nizamat Adalat for its final decision. In case of any difference of opinion between the judges, that of the senior judge was to prevail. The judges were required to report to the Nizamat Adalat every instance of misconduct on the part of magistrates or Qazis and Muftis and to submit occasionally proposals for the improvement of criminal administration. Another duty of the judges was to visit the jail at each station and issue requisite orders to the magistrate for the better treatment and accommodation of the prisoners.

The Sadr Nizamat Adalat was transferred from Murshidabad to Calcutta and was to consist of the Governor-General and members of the Council, assisted by the Qazi-ul-Quzat (Chief Qazi) and two Muftis, the Indian officers being responsible for the interpretation of the law. The office of the Naib Nazim was abolished and the Sadr Nizamat Adalat was vested with the powers so far exercised by Reza Khan as its superintendent. An officer with the designation of "Register to the Nizamat Adalat" was to be appointed for the conduct of its

executive business. While the Adalat was to meet at least once a week, the Qazi-ul-Quzat and Muftis were required to meet at the registrar's office at least thrice a week in order to review the proceedings of all trials referred by the courts of circuit for the final sentence of the Nizamat Adalat and to write at the bottom of the proceedings their opinions as to the propriety of the fatwas of the courts of circuit. The registrar's function was to submit at the next meeting of the Adalat the proceedings of the courts of circuit, the sentences passed by their law-officers together with the opinion of the Chief Qazi and the Muftis of the Nizamat Adalat. It was only then that the Nizamat Adalat was to pass the final sentence, a copy whereof was to be translated by the registrar within the next three days, and sent to the judges of the court of circuit which was to issue forthwith a warrant to the district magistrate to carry out the sentence. On obeying that order without delay, the magistrate was to return the warrant to the court of circuit which in its turn was to forward it to the Nizamat Adalat.

If any criminal appeared to be a proper object for mercy, the Nizamat Adalat was to recommend his case to the Governor-General-in Council, to whom was reserved the power of remission of punishment. The Nizamat Adalat was to take cognizance of all matters relating to the administration of criminal justice and police and to propose essential regulations regarding the same for the consideration and sanction of the Governor-General and Council.

Some bold decisions were at the same time taken as regards the Islamic Law. For cases of homicide, the doctrine of Abu Yusuf and Imam Muhammad as against that of Abu Hanifa was accepted as the general principle. In other words, it was determined that the intention of the murderer and not the manner or instrument of perpetration should henceforth regulate the test of criminality. The next alteration was to debar the heirs of the deceased from pardoning the murderer. Law was to take its course independent of the will of any individual.

References

1. Secret Cons., 25 May 1775.
2. See the petition of Mirza Musseeta, Nawab's confidential agent, to the English Government, Secret Cons., 6 July 1781.
3. *Seir*, Vol. III, p. 142.
4. Secret Dept. of Inspection Cons., 24 Aug. 1784.
5. Misc. Progs. from Court (1785-87), pp. 40-66.

Continuing he wrote, "my request has only relation to the Government of the city, and the administration of justice and is entirely unconnected with the Revenue, or management of country and to be held under the controul of your Council."

6. *Seir*, Vol. III, p. 82.
7. Ives's Report, 1787 ; Pub. Cons., 3 Sept. 1790 ; Nizamat Dept. Records, Letters received from Government, Vol. I.

In view of the growing debts of the Nawab, the Court of Directors instructed their servants on 21 July 1786 "to provide for the support and dignity of the Nawab" by extricating him from his pecuniary difficulties. On 20 June 1787, Ives was appointed by the Governor-General and Council to ascertain the precise amount of the Nawab's debts and to suggest plans for liquidating those debts, providing for the maintenance of the Nawab's increasing family and dependants, and effecting the necessary retrenchments in the establishment of the Nizamat.

8. *Seir*, Vol. III, p. 150, the translator's foot-note.
9. Sylhet District Records, Vol. III, pp. 18-19, 21, 37 ; Nos. 28, 34, 51.
10. Rev. Cons., 26 March 1788.

One totally illiterate Daroga was mentioned in the report of his predecessor (Champion).

11. Rev. Ccns., 8 Sept. 1788 ; Rev. Jud. Cons., 3 Dec. 1790. Enclosure to the Governor-General's minute, reply of the Tirhut magistrate.
12. Rev. Cons., 21 Dec. 1787, 1 Apr. 1789.
13. *Ibid*, 9 July 1788.
14. Rev. Jud. Cons., 29 Sept. 1790, 15 July 1791.
15. *Seir*, Vol. III, p. 148.

In the opinion of the translator of *Seir Mutaqherin*, the black picture drawn of Reza Khan was an exaggerated one. (*Seir*, Vol. III, p. 150, foot-note).

On one occasion, Reza Khan specified the total amount of Rs. 530 for the requisite number of additional muharrirs. This sum was small enough to receive the sanction of the Council.

16. Rev. Cons., 15 Aug. 1788.
- Fifteen muharrirs were required at the following places :—

Sadr Adalat—5 muharrirs at	Rs. 30	each	—	Rs. 150			
Zila Murshidabad—3 "	"	"	20	"	—	"	60

Dacca	—2	muharrirs	at	Rs. 20	each	—	Rs.	40
Patna	—2	"	"	20	"	—	"	40
Chitpur	—2	"	"	20	"	—	"	40
Krishnagar—1		"	"	20	"	—	"	20

A sum of Rs. 20 was also allotted for each of the zilas of Burdwan, Jessor, Mymensing, Bakarganj, Purnea, Dinajpur, Rangpur, Midnapur and Nator.

17. Rev. Cons., 26 March 1788.

Speaking of the indigenous Faujdari system about two years after its abolition, Lodge remarked, "I know not one single circumstance that can be urged in favour of the former system. Many, very many prisoners have died in jail against whom there was scarcely a shadow of criminality and some I fear have even suffered death where not a proof of guilt had been adduced to criminate them."

Report of the senior judge of the Dacca court of circuit. *Vide* Rev. Jud. Cons., 21 Sept. 1792.

18. In 1786, the English Government of Bengal took possession of the island of Penang on the northern entrance to the straits of Malacca. In January 1789, Julius Griffith was permitted to transport twenty prisoners from Bengal to Penang. Since then it came to be used as a penal settlement.

19. Rev. Cons., 21 May 1788.

20. Rev. Cons., 15 Aug. 1788.

Letters of the magistrate of Bihar and the Naib Nazim regarding the transportation of dacoits lay for consideration.

The district of Bihar was formed in 1787 with headquarters at Gaya. It was conterminous with the ancient sarkar of that name and included the areas now covered by the districts of Patna and Gaya.

21. *Ibid*, 19 Feb. 1790. The names of these two robbers were "Tilloke and Oridaan."

22. Rev. Cons., 11 Nov. 1789.

23. *Ibid*, 9 Dec. 1789., 19 Feb., 24 Feb., 1790.

24. *Ibid*, 8 Sept. 1788.

25. *Ibid*, 25 Sept., 21 Oct., 1789.

Under the Council's direction, the Hijili magistrate made two lists of prisoners of the criminal jail. Fifteen sardar dacoits specified in one list seemed to have no other means of livelihood than making depredations in the Hugli river. The specific sentences passed on them were allowed to remain in force. But the other list contained the details of thirty-five prisoners charged with theft.

26. Rev. Cons., 20 Jan. 1790 ; Rev. Jud. Cons., 3 Dec. 1790. Enclosure to the Governor-General's minute.

Lodge was the first Commissioner of the Sundarbans with his headquarters at Bakarganj. The office was created for the suppression of

dacoity in the Sundarbans. Lodge was invested with magisterial authority over the collectorships of Dacca, Chittagong, Jessore, Hijili, Twenty-four Parganas and other salt districts.

27. This case furnished another instance of the defective or negligent recording of evidence. It was the carelessness of the Daroga or his muharrirs that supplied Ainuddin with the only plausible defence he was able to set up, for it appeared from the depositions of two persons that one of them dated the robbery in the month of Jaishtha and the other in Chaitra. Lodge had not the least doubt that the same month was intended by both the witnesses and it must have been incorrectly copied.

28. Rev. Cons., 9 Dec. 1789, 20 Jan. 1790.

29. *Ibid*, 20 Jan., 31 March, 1790. The alternative sentences were as follows:—Bairagi Sardar was to receive 39 stripes and to be released after four months on giving security for future good behaviour. But Tanoo was to restore stolen goods and to be imprisoned ‘during pleasure’. He, however, died before the arrival of the fatwa.

30. Rev. Jud. Cons., 20 Aug. 1790.

31. Rev. Cons., 16 Apr. 1790.

See Appendix F for some instances of inadequate sentences on prisoners in the Faujdari jail of Burdwan. The urgency of altering certain practices of the existing law-courts can be also explained by referring to some criminal causes of Benares during the Residency of Jonathan Duncan (see Appendix G). Benares had been formally ceded to the Company by the Nawab of Oudh in 1775.

32. Rev. Cons., 8 Sept. 1788, 1 Apr. 1789

33. *Ibid*, 8 Sept. 1788.

34. *Ibid*, 10 June, 17 June, 1789; Sylhet District Records, Vol. IV, pp. 76-77, No. 88.

35. Rev. Cons., 15 Aug. 1788.

36. Rev. Cons., 16 Dec. 1789; Rev. Jud. Cons., 3 Feb. 1792.

37. Rev. Cons., 23 Apr. 1788; Sylhet District Records, Vol. III, p. 74, No. 90.

38. Rev. Cons., 31 Dec. 1788.

39. *Ibid*, 21 Oct. 1789.

40. *Ibid*, 16 Apr. 1790; Rev. Jud. Cons., 3 Feb. 1792.

41. Rev. Cons., 15 Aug. 1788, 10 Nov. 1790.

42. Letters to Court, 2 Aug. 1789, 17 Nov. 1790.

43. See Rev. Jud. Cons., 3 Dec. 1790, for Cornwallis's minute, his queries and the replies of the twenty-four district magistrates and the Commissioner of the Sundarbans, which form the subject matter of the pages 250-266 of the present work. See Aspinall, *Cornwallis in Bengal*, chapters II-III. See Appendix H for the list of magistrates who were circularised with those queries.

44. Reply of the Shahabad magistrate.

45. The seventh query :—"Do the Principles of the Mahomedan Law, as applicable to criminal cases, appear well-adapted for the suppression of crimes ; otherwise and if not, what points stand most in need of amendment ?"

46. Rocke of Jessor found fault not with the law but with the depravity of the people. He had seen their reluctance to quit a profession they had once taken to. He also alluded to the constitutional apathy and the patience with which they endured corporal sufferings and even faced death. It was to these factors that he ascribed the continuance of crimes of all sorts, although "such frequent sacrifices" were "made to the offended laws."

47. Reply of the Chittagong magistrate. See Appendix B for the aforesaid Razinama and the order of the Sadr Nizamat Adalat, dated 14 March 1789.

48. Reply of the acting magistrate of Rangpur.

The case was referred to the Sadr Nizamat Adalat. Its decree was to the effect that the learned had absolved Chamroo from the capital sentence and that he was to receive thirty-nine stripes and to be in confinement for four months more and set at liberty on giving a muchalka.

49. Replies from Birbhum, Dacca city, Bhagalpur and Rangpur.

50. Reply of the Sylhet magistrate.

Mr. Law even referred to "a learned and discerning traveller" who had remarked that any one reading the Quran would be obliged to admit that "it conveys no notion either of the relative duties of mankind in society or of the formation of body politic, or of the principles of governing, nothing, in a word, which constitutes a legislative code." (Reply of the Gaya magistrate).

51. Replies from Sylhet, Dacca city, Twenty-four Parganas, Purnea and Gaya.

52. "A disgrace to humanity", said Shore, "the very mention of which makes nature shudder." (Rev. Cons., 18 May 1785).

53. Reply of the Rangpur magistrate.

Graham also asserted that two out of ten did not survive it.

54. Reply of the magistrate of Burdwan. See also letters from Gaya and Shahabad.

55. Replies from Purnea, Dacca city, Nadia, Shahabad and Gaya.

56. Rev. Cons., 28 Nov. 1788.

57. Reply of the Dacca city magistrate.

Pye of Twenty-four Parganas also complained that "too much depends on the will of him who may hold the office of the Naib Nazim."

58. The first query :—"What length of time is ordinarily consumed between the commitment and sentence on prisoners ? This is to be

illustrated by instances of the shortest and longest periods within each Magistrate's knowledge."

59. Replies from Dacca city, Purnea and Chittagong.

60. Replies from Dinajpur, Rajshahi, Bhagalpur, Jessore, Twenty-four Parganas, Gaya, Dacca Jalalpur and Burdwan.

61. The second query :—"Do murder and robbery such as decoyee generally meet with the punishment of death, when apparently meriting it, or otherwise ? Instances to be in like manner adduced on this question."

62. Of certain murderers of Chittagong convicted in one year (1789-90), one was sentenced to death if not pardoned by the prosecutor, two were merely flogged with koras and the fourth one was imprisoned for two months besides being flogged. Two dacoits of the same place were flogged and of them one was in confinement for two months and the other for one year. (Reply of the Chittagong magistrate).

The report of the Burdwan magistrate contains interesting specimens of ill-proportioned punishments.

63. Reply of the Bhagalpur magistrate.

64. "At any rate," to quote Mercer, "it is certainly an improper one for the crimes of murder and robbery, as the persons actually guilty of these crimes should be punished with death ; if innocent not punished at all." (Reply of the Burdwan magistrate).

65. Reply of the Commissioner of the Sundarbans.

66. Reply of the magistrate of Birbhum and Bishnupur.

In view of the death of one of the guards and the hopeless condition of the other, a further set of proceedings was made and sent to the Nizamat Adalat and an order for their capital punishment came at last.

67. "There appears to be," Lodge remarked, "an established system of revenue derived from robbers which is connived in by all the Durbars throughout Hindostan."

(Enclosure to the reply of Commissioner of the Sundarbans).

68. It was presumed by Lodge that Faujdari jails throughout Bengal did not contain less than four thousand prisoners.

69. The sixth query :—"Are the prisoners well or ill-treated whilst in confinement ?"

Those who certified that the prisoners were well-treated were the magistrates of Birbhum, Bhagalpur, Burdwan, Chittagong, Dacca city, Dacca Jalalpur, Dinajpur, Jessore, Midnapur, Murshidabad city, zila Murshidabad, Nadia, Purnea, Twenty-four Parganas, Patna, Rajshahi, Ramgarh, Tirhoot, Hijili and Sylhet.

70. The fourth query :—"Are the officers in general qualified by education and principles for the trial of prisoners ?"

The magistrates of Jessore, Midnapur, Murshidabad city, zila

Murshidabad, Nadia, Twenty-four Parganas, Birbhum, Bhagalpur, Rangpur, Dinajpur, Hijili, Patna, Ramgarh, Sarkar Saran, Shahabad and Bihar declared that the officers of the criminal courts were well qualified by education and character.

71. The fifth query :—"Are their allowances adequate to their situation?"

72. Both these officers were reputed for their respectable character and Aunuddin, who was a relative of Reza Khan, received a very good education too. (Replies of the magistrates of Murshidabad city and Murshidabad zila).

73. The magistrates of Jessore, Hijili, Birbhum, Purnea, Sylhet and the Commissioner at Bakarganj only replied in the affirmative as to the adequacy of the salaries of the officers of the Faujdari Adalats. In Lodge's opinion, these were even sufficient for laying up a considerable portion thereof, whereas Keating of Birbhum held that other amlas could lay by a small amount but the Darogas could not, for they had to keep up a show of dignity.

74. "So long as this is the case", added Mercer, "human nature will but too readily furnish a palliative for its deviations from the strict line of justice, however terrible the consequences of this deviation must be to the state and to society." (Reply of the Burdwan magistrate).

Similar observations were made by the magistrates of Chittagong, Rajshahi and Shahabad, to name only a few.

75. Reply of the Dacca Jalalpur magistrate.

Another source of corruption was the unstable tenure of the office of judge. (Replies from Bakarganj, Burdwan, Bihar and Dacca city).

76. The third query :—"Are the officers of the Provincial Courts regularly paid their allowances or otherwise?"

The opinions of magistrates were almost evenly divided on this question. The allowances were at that time paid regularly in Bhagalpur, Dacca Jalalpur, Dinajpur, Midnapur, Murshidabad city, Nadia, Twenty-four Parganas, Sarkar Saran, Sylhet, Patna, Tirhut, and Sahabad.

77. The eighth query :—"What effectual means can be derived for the suppression of dacoity and water-robbers?"

The ninth query—"What are the most effectual means of reforming the general Mufassal Police of the country, at the least expense to the Government?"

78. Reply of the Sylhet magistrate.

79. Replies of the magistrates of Rajshahi, Ramgarh and Purnea.

80. Replies of the magistrates of Burdwan, Rajshahi and Shahabad.

81. Replies of the magistrates of Dacca, Nadia, Rajshahi, Jessore, Dinajpur, Shahabad, Bihar and the Commissioner of Sundarbans.

Dacoits commonly used Jalkas and Lakkhas which were of the following dimensions :—

	<u>Length</u>	<u>Breadth</u>
Lakkhas	40—90 cubits	2½—4 cubits
Jalkas	30—70 "	3½—5 "

These boats were generally furnished with 40 to 60 oars. They also constructed other kinds of boats with a view to moving with the greatest velocity. These were "boliss-Jelluahs, Doorus, Purindahs" and Pansis with 18 to 26 oars. (Rev. Cons., 24 Dec. 1788 ; Rev. Jud. Cons., 7 Dec. 1792).

82. Several magistrates of Bihar wanted to extend the police responsibility to non-officials also. The Tirhut magistrate wanted a notice to be issued, purporting that neighbours must help the householder to apprehend robbers. The Shahabad magistrate suggested that the respectable 'natives' might be each entrusted with the charge of a certain number of villages and be considered like the Justices of the Peace in England.

Many persons for want of employment acquired habits of idleness which in the end turned to vice. In the opinion of the Bhagipur magistrate, the Government could convert disturbers of the peace into the most useful subjects by discouraging indolence, giving employments to the idle and preventing game houses and liquor shops. Suggestions were also given to encourage information by giving rewards.

83. The Governor-General's minute, Rev. Jud. Cons., 3 Dec. 1790.

"I am aware", wrote also Mr. Law, "of the delicate hesitation to assume the exercise of this power : but is it not inconsistent and unjust to permit three fourths of our subjects to remain under bigoted intolerance ? And does not philanthropy require mediatorial equity ?" (Reply of the Bihar magistrate, Enclosure to the Governor-General's minute, Rev. Jud. Cons., 3 Dec. 1790).

84. *Vide* Seventh Report, 1773.

85. In fact, the English Government still hesitated to deprive the zamindars of the management of the rural police and accept themselves the entire responsibility of the police administration of Bengal. They, therefore, sought to believe that the authority of the magistrate was sufficient to prevent any abuse that existed in the police system.

For their views on this subject, see Rev. Cons., 28 Jan. 1788, 14 Jan. 1789, 8 Oct. 1790.

86. Rev. Jud. Cons., 3 Dec. 1790.

At least another servant of the Company took strong exception to these Regulations. He was Willes, collector of Sylhet. He held that the new judges would be handicapped by (*i*) their imperfect knowledge of the Indian languages and (*ii*) the difficulty of undertaking tours twice a year and deal with accumulated cases of each station within the short time at their

disposal. The absence of stationary courts with the magistrates was in his opinion, likely to create difficulties for witnesses. He also criticised the Regulation (50th Article) that made the magistrates responsible for the execution of capital sentences and added, "The offices of magistrate and executioner seem incompatible." (Sylhet District Records, Vol. IV, pp. 276-78, Nos. 356-57).

Even a year ago in his reply to the Governor-General's queries, Willes had declared, "In our criminal capacity the shadow of the authority of the Nawab of Bengal is between us and this, I suppose, must be kept up. Indeed, I approve the present Fouzday system." (Rev. Jud. Cons., 3 Dec. 1790).

87. An abstract account of the monthly allowances assigned to the twenty-six magisterial establishments is as below :—

Name	Allowance Rs.	Name	Allowance Rs.
1. Burdwan	397	14. Dacca Jalalpur	477
2. Dinajpur	397	15. Dacca Mymensing	477
3. Nadia	397	16. Rajshahi	477
4. Purnea	397	17. Murshidabad	477
5. Chittagong	397	18. Rangpur	497
6. Twenty-four Parganas	397	19. Tamluk	272
7. Birbhum	397	20. Hijili	220
8. Bhagalpur	397	21. Ramgarh	482
9. Jessor	397	22. Sylhet	322
10. Midnapur	397	23. Murshidabad city	622
11. Shahabad	397	24. Dacca city	622
12. Saran	397	25. Patna city	622
13. Tirhoot	397	26. Bihar	524
	5,161		Total— 11,252

88. The following districts were included in the four Divisions of the courts of circuit :—

(i) **Calcutta Division—**

The districts of Nadia, Birbhum, Ramgarh (those in Bihar excepted) Burdwan, Midnapur, the salt districts, Twenty-four Parganas, Jessor and the districts under the collector of Calcutta not within the jurisdiction of the Supreme Court.

(ii) **Murshidabad Division—**

The city of Murshidabad and districts of Bhagalpur, Rajshahi, Dinajpur, Purnea, Rangpur and the districts under the Commissioner at Cooch Behar (exclusive of the independent territories of the Raja of Cooch Behar).

(iii) **Dacca Division—**

The city of Dacca, and the districts of Sylhet, Dacca Jalalpur, Mymensing, Tippera and Chittagong.

(iv) **Patna Division—**

The city of Patna and the districts of Bihar, Shahabad, Saran and Tirhut.

89. Register—the keeper of records ; a registrar (in common use c. 1580-1800).

CHAPTER VIII

CRIMINAL ADMINISTRATION : 1791-1793.

On 6 December 1790, Cornwallis set out for Madras as the war with Tipu Sultan necessitated his presence in the field. Charles Stuart, a member of the Council, officiated during his absence. On 18 December Stuart wrote two letters to the Nawab and Naib Nazim informing them of the new Regulations. The Nawab was requested to send to Calcutta the seal of the Nizamat so that all papers and warrants of the new Faujdari department might be issued under that seal. The Naib Nazim was directed to order the prisoners of all Faujdari jails as also those on bail for trial to be delivered to the district magistrates together with all records for future reference.¹ On the last day of the year the office of Remembrancer of the criminal courts was abolished and the officers of the Nizamat Adalat as also of Faujdari Adalats formally relinquished their posts. Their salaries and allowances ceased from 1 January 1791. On that day was inaugurated the new system.

By shifting the Nizamat Adalat to Calcutta and taking over its superintendence, by abolishing the Faujdari Adalats and instituting the courts of circuit to take cognizance of crimes and finally, by substituting Indian judges by the Company's servants, the Governor-General and Council assumed for the first time the direct responsibility of criminal justice. In introducing the new system, Cornwallis acted on his own initiative without securing the previous sanction of the Directors.² He did not also consult the Nawab and the Naib Nazim, neither of whom had any power or will to unsettle the settled facts.³

The Nawab Nazims of Bengal had long ceased to aspire to the sovereign authority. Mubarak-ud-daulah modestly accepted his inferior status. He was so submissive that he took the Governor-General's prior permission even when he

went to Pialapur near Rajmahal on a hunting excursion just for a few days.⁴ He always lamented the want of the valuables, jewellery and robes that a Nawab Nazim must have to maintain his dignity. He was the father of thirty children. It was by selling his property and borrowing money that he could give only three daughters in marriage. Qutlaq Sultan Begum, the widow of Prince Jahandar Shah of the Royal house of Timur, had proposed a matrimonial alliance between her son and Mubarak-ud-daulah's daughter. But due to his straitened circumstances he had to forego that unexpected honour only a few months back.⁵ In order to avoid the Nawab being sued in the open courts by his dependants for their stipends and by his creditors for their loans, the Council had resolved, on 3 September 1790, to adopt Ives's plan with some modifications. The Nawab was at liberty to spend only the sum of Rs. 9,88,134-6-16 annually for his personal and household expenses subject to certain restrictions. His stipend less this amount would therefore leave a balance of Rs. 50,988-7-8-2 $\frac{1}{2}$.⁶ From this balance, again, was to be apportioned a monthly sum of Rs. 18,000 towards the payment of his debts and a fund for the future maintenance of his increasing family. The rest was to be distributed by the Paymaster of the Nizamat stipends among the Nawab's mothers and dependants. The Nawab was to issue a proclamation calling upon all creditors to prefer their claims against him. He raised several objections against this scheme. The proposed proclamation to his creditors, curtailment of his allowances and disbursement of some of the pensions through the Paymaster were considered derogatory to his dignity. All his objections except the one concerning the proclamation to creditors were however overruled and the Nawab assured the Governor-General that he was at all times ready to carry out whatever his Lordship might decide for his good.⁷

On the occasion also of the abolition of his Faujdari jurisdiction, the Nawab had to eat humble pie. In response to the Council's wishes he supplied the seal of the Nizamat to Fort William. But since this seal bore his name, it was

sent back with directions to inscribe it instead, with the following words "Mohr-i-Adalat-i-Nizamat Sadr, Suba Bangala" (the seal of the Sadr Nizamat Adalat of the Subah of Bengal). This time the Nawab committed no mistake.⁸

He only remarked with timid humility that for a long time past the country Adalats had been regulated by the Islamic Law and administered by eminent Muslim officers "who added lustre to the institution and maintained the prestige of the Nizamat" and added that the gentlemen of the Council could not be ignorant of the sentiments which these changes would arouse in the minds of the people of this country and abroad. "However, the English are the masters."⁹

But the person who was most directly concerned with the criminal administration was not the Nawab, but Reza Khan. Actually, it was he who was now bereft of all his power and glamour. Yet not the slightest murmur arose from his side. On receipt of the news of the abolition of his office, he rather wrote to the Governor-General, "My Lord ! God knows that from the time of my taking charge of this department to the present, a period comprehending 27 years, my endeavours have been exerted to the utmost of my power towards the interest of the Company and the happiness of the people.....and (I) have always complied with every order communicated to me." In conclusion, he fervently prayed for the continuance of the Company's indulgence to him as before.¹⁰ Since the days of Mir Kasim, he had distinguished himself as a subservient friend of the Company. Prudence required him to remain so for the rest of his life. The importunities of his creditors for the realisation of the accumulated debt "made sleep and food tasteless" to him. To Jagat Seth alone he owed Rs. 3,00,000.¹¹ To make matters worse, his elder son Bairam Jang had expired three years ago, leaving to him the burden of his wives and dependants. In that old age, it was impossible for Reza Khan to get off from his extravagant habits. So, he saw no other way than to tamely acquiesce in all measures of the English Government.

On Monday, 10 January 1791, was held the first meeting

of the Nizamat Adalat. For each court of circuit were sanctioned the additional sums of Rs. 70 and Rs. 10 per month for one writer and one Brahmin respectively, as also Rs. 150 to provide a proper place for depositing records and holding court at the Sadr station. An allowance of Rs. 250 was granted towards the office rent of the Nizamat Adalat. The registrar to the Nizamat Adalat and the judges and registrars of the courts of circuit had already been appointed in December last. On 10 January 1791, were selected also the Qazis and Muftis. The Qazi-ul-Quzat of the defunct Nizamat Adalat, Maulavi Muhammad Israil Khan was retained and desired to proceed to Calcutta to hold office there. On account of scarcity of money, only two months' salaries of the former officers could be paid off in January and the balance of arrears cleared in the next month.¹²

The enormous business of the final transfer was facilitated by the full co-operation of Reza Khan. Of course, his loyal service to the Company did not go unrewarded. Although his office was now extinct, he was allowed to enjoy till death his annual pension of Rs. 2,40,000 together with his jagir of 85 lakhs of "dams" in Bihar "as a peculiar mark of respect and a reward for his past services." His younger son Dilawar Jang and the family of his deceased son Bairam Jang had separate monthly allowances of Rs. 2,500 and Rs. 1,300 respectively.

The most urgent task before the new Nizamat Adalat was the disposal of all pending trials. On 17 February 1791 directions were given to Reza Khan to pass orders on all proceedings left incomplete by the Darogas and to send the proceedings to the Nizamat Adalat. On 4 March, he engaged certain munshis, maulavis and muharrirs to assist him in his work. The magistrates and Darogas, however, were not all equally serious. Some of the Darogas procrastinated in delivering their papers. The Bakarganj Daroga even went away taking with him all his records. Some of the magistrates too refused to take charge of all the papers and accepted only a part. The magistrate of Purnea was found unwilling to receive the papers at all. Nevertheless, by the first week of April,

Reza Khan received the records of fifteen districts. He examined them and passed his orders. By the next week he was able to send to Fort William 216 sets of proceedings.¹³

When the records of prisoners were reviewed, it came to light that a considerable number of criminals were sentenced to imprisonment "during pleasure." At the Krishnagar jail, 140 persons were then under that sentence. Of the 300 prisoners at Rangpur, about a hundred belonged to that group. While some of them had been convicted of heinous crimes, many others appeared to have committed only petty offences. For example, notorious criminals like Phulchand, Sutram and Dulu would have been released after a short term, but for the protest of the ryots who were afraid to stay in their houses when these robbers were at large. Of the petty thieves suffering the same fate, some were in confinement for more than a decade. Pakhi, the blacksmith, Paddam of Dissolia taluk and Manaullah of Kazirhat had received only one rupee, a turban and a dhoti respectively as their shares in robbery. Sometimes peculiar circumstances supervened in the way of enlargement. Thus, in the case of Kamal Lochan, who was sentenced to restore stolen goods and was found willing to pay for them in cash, and that of Sakeer who was to have his hand cut off, both had to rot in prison since the prosecutors were not traceable.¹⁴

It became now a vexatious problem for the English Government to determine for what further period the prisoners suffering confinement under no specified term should be individually detained in prison. Reza Khan was, therefore, requested to explain the principles that guided him in inflicting the sentence of imprisonment during pleasure for the variety of offences with which these prisoners had been charged and to state whether this sentence was tantamount to perpetual or only temporary imprisonment. If the latter, he was asked to state the principles by which the term of each prisoner's imprisonment was to be fixed.¹⁵

In reply, Reza Khan explained the cases in which perpetual or temporary confinement or confinement 'during pleasure' could be applied respectively.¹⁶ The answer, however, disappointed

the Council. They found it easy to trace in it the cause of many evils of the late system and observed that it contained no rule at all, unless the discretion of the Hakim could be called a rule for fixing each prisoner's term of imprisonment. It was not their purpose to censure Reza Khan whose character they respected. But they had little doubt that the mofussil judges often availed themselves of these provisions to screen the most notorious offenders from punishment. Reza Khan could only judge the cases from the documents and evidence that appeared on the records transmitted by the mofussil Darogas who had it always in their power, without any risk of detection, to make some doubt appear in respect of the major crime, so as to ensure a sentence of imprisonment 'during pleasure' being passed at Murshidabad. After a short period, these Darogas could also obtain the prisoner's release by representing him as penitent or dying or permanently disabled.¹⁷

On 6 May, Reza Khan was further asked to direct the Darogas to hand over to the magistrates all records and registers of cases, both decided and pending. The clerical staff of the defunct Adalats had already dispersed. It was extremely difficult to assemble them again. This trouble would not have arisen, had Reza Khan received instructions at the outset for the delivery of the entire Faujdari records. None the less, he sent messengers to all the Darogas requiring them to attend upon the magistrates either personally or through agents to make over charge of the entire proceedings of their Adalats. To the Council he repeated his pledge, "I am at all times and shall ever be ready to comply with every order the Council shall please to transmit."¹⁸ His old age could not dissuade him from examining the proceedings of the different Faujdari Adalats, which he continued to pass on to the Nizamat Adalat with his decrees. In May he examined four sets of proceedings from Murshidabad, Burdwan and Saran and also the case of Bahruddin and others, accused of nocturnal assault and murder in Sylhet.¹⁹ During June, he was occupied with the twelve sets from the Chitpur Faujdari Adalat.²⁰ Similarly, in July he passed orders on the proceedings of the Nator and Birbhum

Adalats and also gave his opinion on the cases of Ganga Singh of Sylhet and Balu of Tirhut. He held that infliction of punishment without first recovering the goods being contrary to the Muslim Law, Ganga Sing and Balu must be forced to disgorge the stolen goods before they were punished.²¹

In August, he fell seriously ill. Even then he received twenty-three sets of proceedings from Stuart. Towards the end of that month his condition became precarious. On 29 August he caused letters to be written to Stuart and the Council recounting his past faithful services to the Company and the Company's indulgence to him and imploring them in the event of his death, to allow the Naib Nazim's office as also his allowance and jagir to be enjoyed by his son Dilawar Jang (Muhammad Taqi Khan). He wrote also two letters to the Nawab and Munni Begum with request to support his dependants. On the first day of October 1791, Reza Khan breathed his last. Even on that day Stuart received thirty-eight sets of proceedings with orders duly passed on them. Only a few proceedings were left incomplete.²²

Thus passed away an eminent figure who was for a quarter of a century the first servant of the Nizamat as well as a fast friend of the Company. All throughout his life, he chose to play a pliant tool in the hands of the English Government in their process of supersession of the established system of the Nizamat.

In course of time certain imperfections of the Regulations of 3 December 1790 came to light and one by one the Council revised many of these provisions to suit the requirements of the new system.

On 25 February 1791, the head assistants or registrars were authorised to officiate in the absence of magistrates.²³ Certain measures were adopted for the smooth course of prosecution in murder cases. It was also decided later (8 April 1791) that in case of the death or absence of the prosecutor, the registrar to the court of circuit was to carry on the prosecution on behalf of the Government.²⁴ The heir of the murdered person could no longer grant pardon to a murderer.²⁵

There still existed the possibility of a murderer evading his due punishment by prevailing on the heirs by corrupt means to refuse to prosecute and in the event of such refusal, the law-officers declared their legal disability to exact Qisas. On 13 April 1792, the Nizamat Adalat was authorised to waive this condition in such murder cases and pass sentences.²⁶

Two days later the punishment of mutilation also was annulled. It was decided to substitute rigorous imprisonment for fourteen years in cases where the criminals were sentenced to lose two limbs and rigorous imprisonment for seven years where they were sentenced to lose one limb.²⁷ This was the only material alteration which took place during 1791-93 in the Muslim penal law.²⁸

Objections were also found with that provision which permitted the magistrate to decide only on very petty offences like assault and calumny etc. In consequence of a rigid adherence to it, the confinement suffered by the culprits previous to their being brought to trial, was not infrequently of longer duration than that prescribed on conviction. For a witness this arrangement involved a double or triple attendance. To establish his charge, he had in the first instance to appear before the magistrate and in some cases before the police officer (thanadar) also and thereafter at the trial before the court of circuit. For very petty cases even, he was compelled to leave his private concerns and undertake a journey sometimes of several days, to be also detained for many more days to give evidence. To afford relief to all concerned the Council empowered the magistrates to hear and determine without any reference to the court of circuit all complaints for petty thefts which were unaccompanied by aggravating circumstances or not committed by notorious criminals, and to inflict in those cases corporal punishment not exceeding 30 stripes or imprisonment not exceeding one month.²⁹

Under the Muslim Law, no Muslim could be capitally punished on the evidence of a Zimmi or non-Muslim. In order that Hindus and other non-Muslims, who formed the "nine-tenths" of the population might enjoy equal status with the

Muslims, this odious distinction was abolished on 27 April 1792.³⁰

Discrimination was still made in certain murder cases as regards the validity of the evidence of a woman. In the case of Saiyid Chand, murderer of Naunee (21 April 1791), it was considered necessary to ascertain from the plaintiff whether he had any other evidence except that of women.³¹ In the case of Subhanot and his son Dulu, when question arose as to the validity of the evidence of Amaravati, the widow of the deceased Allad Tewari, it was declared by the law-officers that in crimes which deserved Qisas, the evidence of a woman was never to be taken, while as regards any crime which affected property or for which a fine was imposed the evidence of a man or a woman was equally valid.³²

A pernicious practice had hitherto prevailed of attaching the property of the prisoners under trial. If he was acquitted, his property was returned to him. If he was convicted, it was put on public sale. From the proceeds of the sale, an allowance was paid to reward the professional informers ('goindas and talapleas') whose business it was to point out to the mofussil police officers the haunts of notorious offenders. On the representation of the Rangpur magistrate, the matter was taken into serious consideration and in May 1792, the practice was stopped.³³ A reward of Rs. 10 was declared for every dacoit delivered to the magistrate.³⁴ The prisoners discharged after a long confinement were very frequently found to be destitute of every means of subsistence. It was extreme poverty which often compelled them to revert to their former malpractices. Provision was, therefore, made for the payment of one month's financial help to a needy prisoner released after undergoing a prison term of upwards of six months. The sum was in no case to exceed Rs. 5.³⁵

Instances also occurred in which the oppressed were deterred by poverty from travelling to the magistrate's residence and attending trial, which enabled the criminals to escape due punishments. This was now done away with. On 14 September 1792, a resolution was passed directing the

magistrates to pay to all indigent prosecutors and witnesses a daily allowance of two annas for their maintenance during attendance at the courts of circuit, together with a similar amount as a travelling allowance, for the required number of days.³⁶

Towards the end of 1792, certain young prisoners of the Dacca and Chittagong jails were released. On 7 September the Chittagong magistrate forwarded to the Government a representation from one Badal, a prisoner of the Faujdari jail of his district. It appeared from the representations of the magistrate and the prisoner as also the proceedings of Faujdari Adalat, that Badal denied all charges, while his brother Mooteullah, a dacoit confessed the outrages committed by himself. No specific charge was in fact laid and no investigation was made against Badal. It was pointed out by the magistrate that Badal could not take any active part in the depredations committed by his kinsmen, for at the time of arrest he was only a boy of eight. According to the Naib Nazim's fatwa Mooteullah suffered impalement and Badal was sentenced to imprisonment for which no term was specified. Since then he remained in jail for upwards of fifteen years. On 22 October 1792 the acting magistrate of Dacca drew the attention of the Nizamat Adalat to the predicament of seven prisoners of the Dacca jail, who had been arrested at the ages of six to twelve and had already undergone confinement for four to seven years. The youngest of them, Rubbeah was a boy of six when he was jailed seven years back. On the first day of December, the Dacca magistrate referred to four other prisoners of his district. Of them, Daulat had been arrested on a charge of theft when only eleven and spent nine years in jail. The three others, Gopia, Jafar and Kallu were convicted of robbery at the ages of fourteen, thirteen and eleven and had been in jail for sixteen, nine and four years respectively.

The Council were convinced that the aforesaid prisoners were too young to have committed the crimes which they were charged with and ordered their release. The Chittagong

magistrate was asked to help Badal in getting an honest livelihood at government expense. With the same purpose, they also ordered the Dacca magistrate to pay Rs. 20 to each of the young prisoners on release. For seven of these prisoners, bullocks and ploughs with necessary implements were purchased and to meet those expenses extra sums were sanctioned.³⁷

The reform of the Faujdari jails also was long overdue. On visiting the prison for the purpose of taking over the charge of the prisoners, the magistrate of Twenty-four Parganas was sadly impressed by its wretched condition. It consisted of two rooms measuring 72 by 48 feet each. One of them was perfectly useless as it was then without a roof. The other covered with straw, was so much out of repair that it served no other purpose than forming a shade from the sun. Within it no less than 179 prisoners were kept in chains. They were allowed to walk inside the room during the day, but at night their feet were locked in stocks, each person being allowed a space of 25 inches only. A free circulation of air was impossible in such a close room. It was in this room of straw that they cooked their food. They were supplied with water from an adjacent small and dirty tank. The site of the prison was low and marshy. Death was frequent in that close room with its damp floor, filth and smoke.³⁸ The magistrates of Tippera, Sylhet, Dacca Jalalpur, Chittagong and Birbhum also represented the deplorable state of the prisons of their districts. They were, therefore, asked to transmit plans for pucca jails with estimates of approximate expenses.³⁹

The condition of many other jails was in no respect better than those mentioned above. Most of them having been constructed with bamboo, straw, mats and mud, the Government were put to considerable expenditure annually for erecting temporary buildings or keeping old ones in repair. As for the prisoners, tempted by the weak structure of the cutcha jails, they frequently made their escape. On the other hand, precautionary measures taken to prevent their escape heightened the rigour of confinement. At night they were put in fetters or stocks or tied down to bamboos in postures extremely painful

to them and injurious to their health. For lack of sufficient accommodation the people convicted of offences from the slightest to the greatest degree were promiscuously kept and when shut up had no room to move. In consequence many of them suffered from malignant distempers and died prematurely. To prevent these evils and save the huge recurring expenditure, the English Government at last decided to build strong and spacious jails in all the districts. So, the magistrates were directed (3 February 1792) to submit detailed plans and estimates for necessary alterations or additions to the existing jails, or for the construction of entirely new ones, where necessary.⁴⁰

Since then, the Government received further reports both from the magistrates and the judges of courts of circuit.⁴¹ In fairness to the magistrates, the judges testified that every attention was paid to the cleanliness and accommodation of the prisoners. The Faujdari jails of several districts, namely, Murshidabad, Sylhet, Tamluk, Bihar, Birbhum and Krishnagar had been materially improved during the last few years. These were reported to be very airy and commodious and the prisoners there were in good health. Very little further expenses were required for these jails.

As regards the other jails the reports clearly showed that they were extremely unfit both for preventing the escape of prisoners and the preservation of their health. The three apartments of the Rangpur jail were much too inadequate in size, the enclosure was too narrow and the thatched roof too low for the accommodation of prisoners. The Purnea jail consisted only of sheds built of straw and bamboo, without wall or fence. In the Shahabad jail, which was no more than one small room of mud with a tiled roof on a space of six feet square, prisoners of every description were "huddled and crowded together, and not only fettered but nightly obliged to be secured in stocks." Lack of a free circulation of air and poisonous vapours rendered that room extremely unhealthy. In Rangpur and Sarkar Saran as well, the prisoners were shut up in so small apartments that noxious effluvia emanated from

their bodies and they were "tormented day and night with various species of reptiles, vermin and insects which engendered in the filth, nastiness and thatch" of those miserable habitations came forth in swarms during the hot season. Until 1791, there was no jail at all at Tamluk. The magistrates of Tamluk, Bihar and Birbhum took upon themselves the construction of jails at their personal expense. The Dacca Jalalpur jail was hired at the monthly rent of Rs. 40. This rent was defrayed by the magistrate from his own funds. This house also was too small for its prisoners whose number generally varied from three to four hundred. The walls of the Tirhut jail were mouldering. In the overcrowded Patna jail there was neither a door nor a window. The wall was open at one side and exposed the prisoners equally to the sun and rain.

It was the considered opinion of most of the magistrates that any addition or alteration would be mere waste of money and impracticable. They recommended the construction of entirely new brick buildings and submitted plans and estimates of the necessary expenses.⁴²

The magistrates had to rely on the information given by the local workmen and their estimates greatly varied. In a district like Rangpur, the cost of construction was specially high. Again in Birbhum, they got sand, "chunam, burgars" and beams very cheap but the conveyance was a great problem, as there was hardly any hackney to be hired. The Tippera magistrate quoted a very high amount for a large pucca jail capable of containing six hundred prisoners. The jails which received greater number of prisoners had to be built larger than the others. No standard could, therefore, be fixed as regards the dimensions of the proposed jails.

Similarly, it was not possible to arrive at a general conclusion as to the increase or decrease of the number of prisoners in course of the last three years. At Rangpur there were 274 Faujdari prisoners in January 1789. This number was reduced to 191 in December 1791. The highest number of prisoners confined at one time during the last three years at Rangpur and Dacca was 365. The prisoners at Krishnagar were

generally from 250 to 300. In April 1792, this number diminished to 232. Some monthly averages of the number of prisoners in the Dinajpur jail were 228, 296 and 296 while those of Sylhet were 49, 54 and 64 respectively. The number in the Hijili jail generally varied from 60 to 80 persons.⁴³

On 5 October 1792, Cornwallis's Government passed their final resolutions on jails.⁴⁴ It was decided to rebuild, alter or enlarge all jails according to the resolutions of 3 February last. Each jail was to consist of two blocks, one for the civil and the other for the criminal offenders. Provision was to be made in the criminal jails for separate apartments for the different kinds of prisoners as also for the female prisoners. The dimension of each jail was to be regulated according to the number of prisoners expected to be usually confined therein.

In view of the difficulty of constructing so many buildings in different parts of the country at one and the same time, the Council planned to erect five new jails each year. The jails of the cities of Patha and Dacca and the districts of Rajshahi, Burdwan and Twenty-four Parganas appeared to be in the worst state, though they contained the greatest number of prisoners. The reconstruction of these five jails was first undertaken. Upon a consideration of the plans and reports furnished by the magistrates, the final plans were drawn up by the chief engineer. Thus Cornwallis eliminated some of the glaring abuses that had long corroded the prison administration of Bengal.

By the Regulations of 7 December 1792, the English Government took the police of the country directly into their own hands and established a uniform system of police throughout the country.⁴⁵

The zamindars and farmers were required to disband their Police establishments and prohibited from maintaining such establishments in future. They were relieved of their responsibility for robberies committed within their estates. It was only in cases in which they connived at robberies, harboured the criminals, aided their escape, refused or neglected to afford all possible assistance to the Government officers in the

apprehension of criminals, that they were liable to make good the value of the property stolen or plundered.

The magistrates were directed to divide their districts inclusive of rent-free lands into police jurisdictions of areas of 400 square miles each. Each such area was to be policed by a "Daroga" (police superintendent) with an establishment of officers, selected and appointed by the magistrate and paid by Government. The sum of Rs. 83 including the Daroga's salary of Rs. 25 was sanctioned for each police jurisdiction. In a large town, ganj or bazar, the Daroga was to receive the salary of Rs. 30 and an additional number of barkandazes.⁴⁶

The duty of the Daroga was to arrest all criminals and vagrants and deliver them to the magistrate. He was entitled to receive ten per cent on the value of all stolen property recovered by him. The cities of Murshidabad, Dacca and Patna along with their adjacent places were to be divided into wards with Darogas in their charge. Every morning the Daroga was to bring before the Kotwal of the city any robber or other offenders apprehended during the preceding night. It was the Kotwal's business to produce the arrested person before the magistrate without delay.

The police services of the village watchmen were not dispensed with. But their command was transferred to the newly appointed Darogas. All paiks, chaukidars, pasbans, dusauds, nigahbans, harces and other village watchmen were declared subject to the orders of the Daroga, who was to keep a register of their names. They were to apprehend and send to the Daroga any murderer, robber or thief caught red-handed or against whom a hue and cry had been raised. It was their special duty to convey to the Daroga immediate intelligence of robbers or suspected vagrants. Their "dependent connection" with the zamindar was in a way retained, for the nomination to the vacancies was still left with the zamindar. And nothing was said regarding their liability as private servants of the zamindar and thus the double character of the village watchmen was "perpetuated."⁴⁷

The annual expense of maintaining these Police establish-

ments was estimated at Rs. 3,19,440. To meet this amount, it was decided to levy tax on merchants, traders and shopkeepers of towns, markets and ganjes.

The periodical reports of the courts of circuit indicated that substantial benefits accrued from the new system of criminal administration. With the completion of two circuits by the end of the year 1791, it came to light that the number of prisoners tried by the Calcutta court of circuit amounted to 663 on its first circuit and to 331 on its second.⁴⁸ In the Dacca Division, 209 causes and 593 prisoners were tried on the first circuit, while on the second these numbers were reduced to 126 and 381 respectively. In Murshidabad, the number of prisoners tried on the second and third circuits rose from 285 to 376. This increase was attributed by Ramus, the senior judge of the Murshidabad court of circuit, to the greater vigilance of the magistrate.⁴⁹

The judges held that the recent arrangements had essentially operated towards the prevention of crimes. The accused no longer remained in jail under painful suspense for dilatoriness of trial. Prisoners were not detained as before for indefinite periods, nor could they escape through the venality of the officers of justice. Justice took its course without any distinction being made for riches or rank. Offences of all kinds, specially dacoity and murder, had decreased and murder was invariably punished with death. In cases of theft restoration of stolen goods was not loaded with official demands on it. Accusation from private resentment or pecuniary expectations did no longer find encouragement. The magistrates exerted themselves much to procure every necessary evidence. The people were now sure of a speedy and impartial justice. The increase of inferior punishments and the comparative decrease of acquittals were ascribed to the regularity observed in the conduct of trials.⁵⁰ Shore also declared that the judicial and police administration had remarkably improved during the last few years and "Form and consistency have been substituted for discretionary authority."⁵¹

As for Cornwallis, he had never any doubt as to the efficacy

of his judicial arrangements. These, he held, "cannot but be considered as blessing by the generality of the inhabitants of this country..., when contrasted with the evils which they experienced from the dilatoriness, corruption and complicated abuse which too generally prevailed in the criminal courts under the late system."⁵² He was no doubt happy to find his high hopes corroborated by the general information as well as the statements of the judges of circuit.⁵³ In his minute of 11 February 1793 he declared with no reservation that "the most happy effects have already been felt from this system" and that the Police Regulations of 7 December last, when completely carried into effect would considerably check murders, robberies and other criminal offences.⁵⁴

In the Code of 1 May 1793, the Regulations of 3 December 1790 and 7 December 1792 were re-enacted only with slight modifications. Four courts of circuit, each consisting of three judges, were established at the cities of Murshidabad, Calcutta, Dacca and Patna. In their civil capacity, they were known as the provincial courts of appeal and in their criminal capacity as courts of circuit. Judges of these courts in their latter capacity possessed exactly the same powers as the former judges of circuit with this additional advantage that they could now complete jail deliveries in half the time they took previously. The trials also were expedited. While the senior judge made the circuit of half the stations, the other two performed the circuit of the remainder.

The Cornwallis system was based on the assumption that the Indians were incompetent for any but the lowest offices under Government and that to give them the blessings of Pax Britannica, it was necessary to run the administration exclusively by the European agency.⁵⁵

Although the transference of the heavy responsibility of criminal administration and the creation of new offices involved additional expense to Government, and the Directors had frequently disapproved of innovations of system, Cornwallis could afford to inaugurate the new system without waiting for their approbation. He considered his reorganization of the

criminal administration as "one of the most valuable services" he could render to the Company and hoped that it would "render the great body of the people deeply interested in the stability" of the British Government.⁵⁶

On 15 August 1793 Cornwallis left Calcutta for Madras *en route* to England. On 7 September next, death put an end to the miserable existence of the fainéant Nawab Mubarak-ud-daulah and to the long series of his fruitless petitions.

One by one, all the principal actors in the decline of the Nizamat had disappeared from the stage, save only the old lady, Munni Begum. Mother of two Nawabs, she was also known as the mother of the Company. Like Reza Khan, she was ever a faithful friend of the English Government. From behind the harem, she played as an instrument in the hands of the Company in consolidating its sway on the Nawab's household. Born in an obscure village near Sikandra and sold by her mother to a slave girl, Munni Begum rose to be the principal Begum of a Nawab and mother of his two successors and saw them all carried to the grave within a space of five years. And for about twenty years more even after the death of Mubarak-ud-daulah, she remained a living witness to the vanished glories of the Nizamat.

References

1. C.P.C., Vol. IX, Nos. 831-32; Nizamat Dept. Records, Letters received from the Government, Vol. 3.

No charge was brought against Reza Khan to whom the Governor-General wrote, "I have been induced to adopt this arrangement—not from any unfavourable disposition towards you, on the contrary I shall always consider you with those sentiments of regard and esteem which I have ever entertained for you."

The Nawab's reading of the facts was somewhat different. "When the English", he observed, "took upon themselves the administration of the affairs of the country they placed the Fougedary system under the control of the Nizamat and conducted the business of it by deputies, hence the name of the Nazim still existed in the three subahs; but in consequence of the indisposition and debility of the late Nabob Mozaffer Jung, the Fougedary system was disjoined from the Nizamat." Letter to Reza Khan, 18 Dec. 1790; Letter from Mubarak-ud-daulah,

received on 2 Jan. 1793 (see Nizamat Dept. Records, Letters received from the Government, Vol. 3, and Letters sent to the Government, Vol. 5).

2. About two years later, the Directors notified their approbation : "...we do not think it proper", they wrote, "any longer to postpone our approbation of your regulations for the Criminal Justice." (Rev. Dept. General Letter from Court, 10 Oct. 1792).

3. The two letters which Cornwallis wrote to the Nawab on 3 December 1790, did not refer at all to the new Regulations. In one of these letters, he only thanked the Nawab for the present of pistachios, almonds and other dry fruits, confections and jars of preserves "so kindly sent by the Nawab" as a token of his good wishes. In the other, the Nawab was advised to act conformably to the plan adopted by the English Government for the liquidation of his debts. (C.P.C., Vol. IX, Nos. 784-85).

4. C.P.C., Vol. IX, Nos. 31, 60.

5. *Ibid*, Nos. 94-95, 335-36, 367-68 ; Nizamat Dept. Records, Letters sent to the Government, Vol. 4.

In his reply to Qutlaq Sultan Begum the Nawab wrote "...what can be the relation between the sun and the particle of dust or the moon and the suba" (a small dim star in the tail of Ursa Major).

6. Rs. 50, 988—7 annas—8 gondas—2½ karas.

7. Pub. Cons., 3 Sept. 1790 ; C.P.C., Vol. IX, Nos. 601, 702, 757, 785, 1058, 1062, 1075.

Harington was appointed to the new office of the Paymaster of the Nizamat stipends.

8. C.P.C., Vol. IX, Nos. 931, 1004.

9. *Ibid*, No. 943.

It was in the same vein that the Nawab wrote even after two years that "Altho' sound policy characterizes this measure of the English, yet let it be considered that this system has in this country been for centuries conducted by the Mahomedans, and the inhabitants are attached to this mode and any new system however it may possess advantages over customs and regulations that have received the sanction of time, yet as militating with established practice, it gives rise to aversion and apprehension and thus it is a proverb 'Every nation has its customs.'" (Letter from Mubarak-ud-daulah, received on 2 Jan. 1793. See Nizamat Dept. Records, Letters sent to the Government, Vol. 5).

10. Rev. Jud. Cons., 7 Jan. 1791 ; C.P.C., Vol. IX, No. 946. This letter is wrongly noted in the C.P.C. to have been received at Fort William on 25 January 1791. In fact, it was received on 26 December, 1790.

11. In March 1788, he had to mortgage his dwelling house at Calcutta (commonly known as the Government House) to Capt. T.

Burgess, Jr. for a sum of Rs. 1,07,733-6. (*Bengal : Past and Present*, Vol. XIV, p. 176; Vol. XVII, p. 5).

In the words of Ghulam Husain, "he lives...like a thorough spend-thrift...Hence we see him eternally dunned by his creditors." (*Seir*, Vol. III, p. 148).

12. Rev. Jud. Cons., 15 Dec. 1790, 14 Jan. 1791 ; C.P.C., Vol. IX, Nos. 879, 926.

On that day it was also decided to annex the whole of Ramgarh district to the court of circuit for the Patna Division. The same resolution for the above district was passed again on 7 October 1791.

A list of the new officers of the Nizamat Adalat and the four courts of circuit :—

The Nizamat Adalat

J. Fombelle...registrar	Maulavi Muhammad	Qazi-ul-
	Israel Khan	... Quzat.
	Muhammad Moshuruff...Mufti.	
	Mir Haidar	... Mufti

The Calcutta Division

J. White...senior judge	Suraj-ul-Haq	... Qazi
T. Brooke...junior judge		
J. Routledge...registrar	Dundi Khan	... Mufti

The Murshidabad Division

H. Ramus...senior judge	Saiyid Muhammad	... Qazi
W. H. Amherst...junior judge		
F. Hawkins...registrar	Shams-ud-din	... Mufti

The Dacca Division

H. Lodge...senior judge	Shekh Muhammad	
	Mokum	... Qazi
W. Camac...junior judge		
C. Ogilvie ...Registrar	(No Mufti for the present)	

The Patna Division

W. Hunter...senior judge	Muhammad Ali	... Qazi
J. Neave ...junior judge		
A. Wright...registrar	Shuab-ul-Haq	... Mufti

13. Rev. Jud. Cons., 15 April 1791 ; C.P.C., Vol. IX, Nos. 993, 1003-4, 1028, 1033, 1070, 1083-85, 1102, 1191, 1213, 1247-48.

14. Glazier, *Further Notes on the Rungpore Records*, pp. 15-18.

15. Rev. Jud. Cons., 15 April 1791 ; C.P.C., Vol. IX, No. 1118 ; Rev Dept. Letter to Court, 10 Aug. 1791.

16. Rev. Jud. Cons., 6 May 1791 ; Rev. Dept. Letter to Court, 10 Aug. 1791 ; C.P.C. Vol. IX, Nos. 1164-65.

The substance of Reza Khan's answer—

(A) The sentence of Hubsi Mouribbid (life imprisonment) was awarded to the culprit who would have been capitally punished but for the existence of some dubious circumstances or for non-fulfilment of certain conditions. This punishment was applicable to the following :—

- (i) a person charged with highway robbery without murder, who confessed his guilt or whose guilt had been proved by evidence,
- (ii) a disturber of the public peace,
- (iii) a person who did not himself take active part in robbery but employed men for highway robbery and appropriated the booty,
- (iv) a person notorious for robbery and persistently denying the crime,
- (v) a person arrested for robbery and denying the crime, while other robbers testified to his part in the crime either as their leader or as an accomplice, there being no evidence to the contrary,
- (vi) a person so habituated to wicked practices like theft, cheating, sedition and shedding of blood that repeated punishments of whipping and imprisonment failed to correct his evil ways.

In such cases the Imam could also inflict the death sentence, if such a sentence was deemed desirable in the interest of the society. A criminal condemned to life sentence could be released if after a long term, he became permanently disabled owing to blindness, lameness or decrepitude or severe illness. But the grant of such remission was rare in practice.

(B) A criminal who was charged with some serious offence, but merited a punishment slightly less severe than life imprisonment was sentenced to Hubsi Muttuck (confinement during pleasure). This sentence was applicable to :—

- (i) a person arrested for robbery who retracted before the court his written confession previously submitted before the girdawar (police officer), though his denial could not supersede his confession,
- (ii) a person who pleaded not guilty and declared that his previous confession in the Faujdari had been extorted by coercion, though the trend of his statement disproved neither his confession nor his denial,
- (iii) a person notorious for robbery who made no confession anywhere and there was no proof against him,
- (iv) a person who had been repeatedly arrested for theft and it

was proved that he was addicted to petty thefts and would not give up that practice.

(v) a person arrested for mischief making, creating disturbances and committing riot, picking pockets, forgery and fraud.

If in course of time, a prisoner's innocence of such great crime was established or he was found repentant or dying or incapacitated by long confinement or serious illness, it was open to the Imam to set him free.

(C) The sentence of Hubsi Mandee (temporary confinement) was inflicted on persons whose crimes were less atrocious than either of the two above-mentioned categories.

This punishment was awarded to :—

- (i) a person who was detected in the company of robbers but declared that they carried him by force or that he was their servant and that he was ignorant of their being robbers,
- (ii) one who was arrested for committing petty theft,
- (iii) a person who wounded another in an affray and the wound was healed up,
- (iv) a person who stole an inconsiderable article and whose statement showed that he was not a habitual thief, but had been driven by hunger to commit theft for the first time.

17. Rev. Dept. Letter to Court, 10 Aug. 1791.

18. Rev. Jud. Cons., 27 May 1791 ; C.P.C., Vol. IX, No. 1213.

19. C.P.C., Vol. IX, Nos. 1190, 1214, 1245.

20. *Ibid.*, Nos. 1239, 1262, 1282, 1323.

21. *Ibid.*, Nos. 1371, 1407.

22. *Ibid.*, Nos. 1371, 1470, 1543, 1546, 1564, 1601-4, 1629 ; Rev. Dept. Letter to Court, 10 March 1792.

After Reza Khan's death, Dilawar Jang applied for the Naib Nazim's office and its annual pension together with his father's jagir. Though his prayer was not fully granted, a sum of Rs. 11,200 a month was assigned to him in addition to Rs. 1,300 a month for the support of the late Bairam Jang's family. Thus even Reza Khan's sons were amply rewarded for their father's services to the Company. See C.P.C., Vol. IX, Nos. 1558-60, 1563-64, 1607, 1720. Nizamat Dept. Records, Letters received from the Government, Vol. 4.

23. Rev. Jud. Cons., 25 Feb. 1791.

24. *Ibid.*, 8 April 1791.

25. *Vide* the 34th Regulation of 3 December 1792.

In some cases, however, the heirs still exercised the right of pardon. In the Amala murder case, dated March 1791, one of the heirs of the deceased (Parvati, her daughter) pardoned Mangal Das, the husband and murderer of Amala. The offender thereby escaped capital punishment and Shoroo, a sister of Amala was declared entitled to a share

of the Diyat. In the case of Zeaullah also, the father of the murdered person unconditionally pardoned the culprit who, therefore, paid compensation to the only other heir of the deceased. Such deviations were not, however, frequent or normal.

N. K. Sinha—(a) How Qazis and Muftis did justice (*The Modern Review*, March, 1948).

(b) The system of Muslim Justice (*Bengal : Past and Present*, 1949, Vol. LXVIII).

26. Rev. Jud. Cons., 13 April 1792 ;

Rev. Dept. Letter to Court, 25 Aug. 1792.

This rule was later on extended to those murder cases, where the heir of the slain did not attain the proper age to be entitled by the Mahomedan Law to claim Qisas. (Rev. Jud. Cons., 29 Oct. 1792).

For some minor regulations on cases of homicide, see Rev. Jud. Cons., 9 Oct., 11 Oct., 1791.

27. Rev. Jud. Cons., 15 Apr., 10 Oct., 1791 ; Rev. Dep. Letter to Court, 10 Aug. 1791.

Although the substitution of temporary hard labour, fine or imprisonment for the amputation of limbs had already been suggested by Cornwallis in his minute of 3 December 1790, this point was not inserted in the proposals which were incorporated in the Regulations of that date. (Rev. Jud. Cons., 3 Dec. 1790).

28. The Hindus, as the Council believed, would readily welcome any alteration in the Muslim criminal law that might contribute to their security. This law, they added, which was repugnant to civil and religious traditions of the Hindus was only forced upon them by their "intolerant conquerors." At the same time, they did not think that the time had come for a complete supersession of the Mahomedan Law. No further innovation, they held, should be introduced until the minds of the people were prepared by "a more intimate acquaintance with the enlightened principles" of the European laws. (Rev. Dept. Letter to Court, 10 Aug. 1791).

29. Rev. Jud. Cons., 24 Feb. 1792 ; Rev. Dept. Letter to Court, 10 March 1792.

30. Rev. Jud. Cons., 27 April 1792 ; Rev. Dept. Letter to Court, 25 Aug. 1792.

It may be noted, however, that the fatwa on Rahim Khan who murdered his daughter with a sword was that he would have to pay Diyat of Rs. 1,562-8 instead of suffering capital punishment only because the witnesses against him were non-Muslims. The Council condemned Rahim Khan to rigorous imprisonment for life. (Rev. Jud. Cons., 1 June, 29 June, 1792).

31. N. K. Sinha—The System of Muslim Justice. (*Bengal : Past*

and Present, Vol. LXVIII). In the case of Tanoo Dafadar (20 February 1793) the evidence of women was declared invalid.

32. Rev. Jud. Cons., 21 Dec. 1792.

Of course, in the case of Guju charged with the murder of Sher Khan Afghan, no sentence could be passed by law-officers, owing to the non-attendance of the female relations who positively refused to appear in the court. The Council ordered Subhanot, Dullu and Guju to life imprisonment with hard labour.

33. Rev. Jud. Cons., 4 May 1792 ; Rev. Dept. Letter to Court, 25 Aug. 1792.

34. Rev. Jud. Cons., 20 June 1792.

35. *Ibid*, 13 July 1792 ; Rev. Dept. Letter to Court, 25 Aug. 1792.

36. Rev. Jud. Cons., 4 May, 14 Sept., 1792 ; Rev. Dept. Letter to Court, 12 Dec. 1792.

Previous to recommending this measure, the Nizamat Adalat called upon the judges of the courts of circuit to report the amount of the subsistence they would recommend for the above persons and to obtain from the magistrates an accurate statement of the probable annual expense to be incurred by Government on this account. On receiving their reports, the Nizamat Adalat estimated the expense to be less than nine thousand sicca rupees.

37. Rev. Jud. Cons., 7 Dec., 21 Dec., 1792 ; 25 Jan. 1793.

A list of the aforesaid prisoners of the Dacca jail :—

	Age at the time of arrest.	Period of imprison- ment undergone.
1. Mrityunjay	12 years	5 years
2. Kistnye	11 "	5 "
3. Sankar	7 "	7 "
4. Kirteah	7 "	7 "
5. Jalleah	9 "	7 "
6. Rubbeah	6 "	7 "
7. Tillook	9 "	4 "
8. Gopeea	14 "	16 "
9. Daulat	11 "	9 "
10. Jafar	13 "	9 "
11. Kallu	11 "	4 "

38. Rev. Jud. Cons., 25 Feb. 1791.

39. *Ibid* ; Rev. Jud. Cons., 11 March 1791.

40. Rev. Jud. Cons., 3 Feb. 1792. Rev. Dept. Letter to Court,

10 March 1792. In preparing the plans the magistrates were to see that

(i) apartments were rendered sufficiently airy,

(ii) the walls, doors and windows were of sufficient strength to prevent escape of prisoners,

(iii) the prisoners were secured from accidents of fire,

- (iv) different types of prisoners were kept separate from each other,
- (v) the alterations and additions and new constructions were made with durable materials.

They were also to enclose with the plans an accurate statement of the nature, quality and quantity and the lowest price of the materials required as also the expenses of the workmen. They were also to report the number of prisoners in confinement during the last three years. In all their plans and estimates, the magistrates were required to observe the principles of strictest economy.

Relying on the assurance of the Council that only indispensable alterations would be made at the least possible expense to the Government, the Directors gave their approval of the resolutions of 3 February 1792 (Rev. Dept. Letter from Court, 25 June 1793).

41. Rev. Jud. Cons., 21 Sept. 1792.

42. An abstract account of the expenses estimated for erecting new jails :—

A. (1) Shahabad	Rs. 5,954- 0- 6
(2) Chittagong	" 4,816-14- 0
(3) Rangpur	" 12,222-13- 5
(4) Purnea	" 5,585-12- 0
(5) Sarkar Saran	" 5,813- 3- 6
(6) Dinajpur	" 7,947- 8- 0
(7) Ramgarh	" 3,501- 0- 0
(8) Tippera	" 21,208- 0- 0
(9) Dacca Jalalpur	" 7,877- 4- 10
(10) Nadia	" 7,475- 0- 0
(11) JESSORE	" 8,481- 7- 0
(12) Ratna	" 23,176- 8- 1
(13) Bhagalpur	" 3,246-13- 0
(14) Tirhoot	" 14,285- 0- 0 (for a debtor's prison and a criminal prison)

B. Estimated expenses of minor alterations :—

(1) Murshidabad	Rs. 408- 2
(2) Sylhet	" 804- 2
(3) Birbhum	" 2,422- 0

43. Rev. Jud. Cons., 21 Sept. 1792.

Magistrates of Rajshahi, Burdwan, Midnapur and the Dacca city having delayed the reports, they were, on 5 October 1792, asked to send them without delay.

44. Rev. Jud. Cons., 5 Oct. 1792; Rev. Dept. Letter to Court, 12 Dec. 1792.

45. Rev. Jud. Cons., 7 Dec. 1792.

46. The general monthly establishment of a Daroga :—

	Rs.
1 Daroga	25
1 Jamadar	8
10 Barkandazes at Rs. 4 each	40
1 Muhaarir	5
Kachahri, stationery and other contingencies.	5
	Rs. 83

47. McNeille, *op. cit.*, pp 12-13.

48. Rev. Dept. Letter to Court, 10 March 1792.

49. Rev. Jud. Cons., 21 Sept. 1792.

50. See (a) Rev. Jud. Cons., 21 Sept. 1792, for letters from the senior judges of the Dacca and Murshidabad courts of circuit;

(b) Rev. Jud. Cons., 25 Jan. 1793 for letters from the judges of the Calcutta court of circuit, and the senior judge of the Patna court of circuit.

51. Rev. Jud. Cons., 29 March 1793.

After one year of his own rule, Shore remarked, "The judicial system proceeds well, I am satisfied that his Lordship's plan was solid, wise and has proved beneficial to the country."

See *Memoir of the Life and Correspondence of John, Lord Teignmouth*, Vol. 1, p. 310.

52. Rev. Dept. Letter to Court, 10 Aug. 1791.

53. *Ibid.*, 10 March 1792; Rev. Jud. Cons., 21 Sept. 1792.

54. Minute of the Governor-General, 11 Feb. 1793; see Second Report from the Select Committee, 1810, Appendix 9(A).

By way of contrast, reference may be made to certain observations made in 1802 by the judges and magistrates of Midnapur, Burdwan and Twenty-four Parganas and judges of the courts of circuit of Calcutta and Murshidabad. They did not find the police system of Cornwallis well-calculated to ensure the suppression of crimes. According to their reports crimes of all kinds increased since 1793. Of a hundred dacoits in Midnapur hardly ten were apprehended "and perhaps not two convicted."

See Appendix 10 to the Fifth Report from the Select Committee, 1812.

55. In course of time this system of government was found to be as inefficient as it was "ungenerous". It is interesting to find Strachey, judge and magistrate of Midnapur, declaring in 1802 that Europeans were "necessarily ill-qualified in many points to perform the duties" of judges and magistrates. "An intelligent native", he added, "is better qualified to preside at a trial, than we can ever be ourselves". (Appendix 10 to the Fifth Report from the Select Committee, 1812).

56. Minute of the Governor-General, 11 Feb. 1793, see Second Report from the Select Committee, 1810, Appendix 9(A).

CHAPTER IX

A RÉSUMÉ

The state of administration in Bengal of 1765 had little relation with the current theory of sovereignty. The battles of Plassey and Buxar, the treaties concluded by the East India Company with Mir Jafar and Mir Kasim transferred de facto authority from the Nizamat of Bengal to the Company. The treaty with Najm-ud-daulah in February 1765 followed by his agreement in September next completed his military dependence on the Company. Removal of Nandakumar and installation of Reza Khan, a proved friend of the Company, at the chief management of all affairs of government together with the Nawab's undertaking that Reza Khan would in no case be removed except with the consent of the Council, placed the supreme control over the administration of Bengal in the hands of the Company.

The acquisition of Diwani in August 1765 gave a cloak of legitimacy to the de facto authority of the English in Bengal. It gave them complete control over the civil justice and finances of this country. By the end of the year 1765, the English Government were in a position to exercise directly all powers of sovereignty in Bengal. It is difficult to see how an Emperor like Shah Alam II and a Nawab like Najm-ud-daulah, both dependants on the Company's bounty, could have resisted its assumption of even the criminal administration of Bengal, had that been contemplated at that time. The English, however, suffered that branch of government to remain as the exclusive jurisdiction of the Nawab Nazim. They made the confusion worse confounded by refusing to undertake even the responsibilities of Diwani and handing over the administration to the Nawab's officials at the head of whom was Reza Khan, who henceforth combined the offices of Naib Nazim and Naib Diwan. A Government of Bengal without a Nawab was not yet

contemplated. The English Government made it a point of policy to act, under the shadow and semblance of the Nawab's authority, as the mainspring of the whole administration and all those sovereign rights which constituted the essence of the Nawab's prerogative. By bringing about a sudden revolution of government in Bengal, they were not prepared to give umbrage to the foreign nations in India and precipitate the interference of the ministers of the Crown in England.

By 1765, Mughal system of justice, law and order had broken down. The growing insecurity of life and property since then was a logical sequel to the powerlessness of the Nizamat and the Company's policy of disavowing responsibility. Courts of justice fell in abeyance in areas outside the city of Murshidabad. In the interior, Qazis, Brahmins, zamindars, farmers, shikdars and others administered justice without any lawful commission. Certain pernicious practices sanctioned by the Muslim Law and Government defeated the ends of justice. Professional dacoits, Maghs, Sannyasis, Fakirs and Chuars continued to menace the peace of the country. The famine of 1769-70 by paralysing the economic life of the country turned a section of peaceful peasantry into professional bandits. Many zamindars not only neglected their police duties, but often allied with dacoits. They were not slow to discover that the abuse of their power was a more fruitful source of income than the loyal pursuit of their lawful avocation. To make matters worse, Nawab's police officers—the Faujdars—were discharged in 1770. Efficacy of the Nizamat was destroyed by the ruling influence of the Diwani. No sporadic attempt at reform could ensure justice and protection for the common people so long as power was exercised without responsibility by persons who were intent more on commerce than on administrative efficiency. The institution of Supervisors and Controlling Councils of Revenue was bound to fail, as it did, owing to the basic pattern of the Company's Dual System.

The decision of the Court of Directors to stand forth as Diwan and the coming of Hastings as the Governor of Bengal formed a landmark in the history of the Nizamat. Reza Khan

who had for the last seven years wielded more powers than the Nazims themselves was arrested and removed from the offices of Naib Diwan and Naib Nazim. The Court's letter of 28 August 1771 did not, however, envisage any change in the constitution of the Nizamat. It only directed the Calcutta Council to have in the Company's interest a suitable minister appointed in the Nawab's Court in the place of Reza Khan:

But Hastings with his closer knowledge of the actual condition of the internal government of Bengal outran the instructions of his masters. He held that the separation of the two branches of government—Nizamat and Diwani—was detrimental to the State. He wanted to put an end to this evil by concentrating all functions of government in the hands of the Company. Thereby the people of this country would be accustomed to the Company's sovereignty. The mifor Nazim would exist only as a temporary political makeshift. The continuance of the Naib Nazim's office would unnecessarily complicate and arrest the progress of his plan. These considerations led Hastings' Government to abolish the post of Naib Nazim. To eradicate the late Naib Nazim's influence in the Nizamat and consolidate the English authority instead, Munni Begum was appointed as Nawab's guardian with Gurudas as her Diwan. Hastings abolished the office of Naib Diwan, undertook the direct charge of the Diwani, transferred the Khalsa to Calcutta and stopped paying tribute to the Mughal Emperor. By the Judicial Regulations of August 1772 he reorganized the civil and criminal courts, took over the direct management of the civil courts and vested in the English Government the powers of general supervision over the supreme criminal court and the mofussil criminal courts. The Sadr Adalats of both Diwani and Nizamat were shifted to Calcutta which henceforth became the virtual capital of Bengal. The Nawab was prevailed upon to delegate his prerogative of signing the warrants of capital cases to the Daroga of the Sadr Nizamat Adalat at Calcutta.

All these arrangements, no doubt, facilitated Hastings' supervision of criminal justice. It being the Company's policy to avoid any show of encroachment on the Nawab's authority,

he cautiously preserved outward forms and refrained from interfering in the details of criminal administration. His genuine disposition to preserve the indigenous law and institutions also profoundly influenced his judicial policy. "A true politician always considers how he shall make the most of the existing materials of the country." This maxim of Burke is true of Hastings' policy also. Thus, with the single exception of the 35th Regulation of 21 August 1772, Hastings introduced no alteration in the laws and forms of the Mahomedan courts. For the suppression of increasing disorders he also revived the indigenous institution of Faujdars and thanadars. He, however, subscribed to the view that as the governing power, the Company had a right to supersede, if necessary, the authority of the Nazim in order to correct the anomalies of the Islamic Law ; for he pleaded, in every Muslim State, the sovereign power had the prerogative of interposition in very extraordinary cases even by departing from the strict letter of the law.

But before Hastings could make much headway with his plan of assumption of sovereignty, the Regulating Act introduced serious complications into his government by providing a new Council and the Supreme Court of Judicature. Like the Directors, the hostile majority of the new Council—Francis, Clavering and Monson—wanted the country government to function as a distinct entity. Other European nations still acknowledged the Nawab's authority. He was possessed of a royal mint and coined money. Majority votes in the Council put the clock back. Reza Khan who had been meanwhile acquitted of all charges was restored to the office of Naib Nazim. The Sadr Nizamat Adalat was transferred to Murshidabad and placed under his direct supervision. The number of Adalats and Faujdari establishments was increased. In accordance with the Mughal tradition, Faujdars and thanadars were enjoined to exercise police jurisdiction in collaboration with zamin-dars. Muslim officers of justice and police continued to function under the control of the Naib Nazim.

But this policy of holding up the Nawab's authority came to be contested now by the Supreme Court. In Radhacharan's

case, the Supreme Court broke through the delusion that had been so far preserved carefully by the Company. The revenues, their collection, the administration of civil justice and even the appointment of Nawab's officers were vested in the Company. The judicial reforms of 1772 had been carried out by Hastings' Government without any consultation with the Nawab whatsoever. The only presumptive act of sovereignty exercised by him was his signing the decrees of the Sadr Nizamat Adalat. Even that was a make-believe, for political motives had induced the Company to vest this power in him. Nawab's army also was a mere delusion, for it consisted of nothing more than his sawari and the whole military power of the province was entirely under the control of the Company. While the English Parliament itself cautiously avoided the issue of sovereignty, the Supreme Court openly held that the recognition of the illusion of the Nawab's sovereignty served merely as a screen to cover acts of oppression and to protect the criminals from the "King's Laws." It, therefore, refused to make any distinction between the British subjects and native inhabitants including the Nawab's servants, high and low. In practice, the Supreme Court was responsible for creating further disturbance between 1775 and 1781 in the already disordered state of criminal justice.

The dramatic interest of the history of the Nizamat is enhanced at this stage by the contentions in the Council which show how conveniently vague were the rights of the Nawab Nazim. For instance, Hastings had declared in October 1775 that the Nawab was "a mere pageant without so much as the shadow of authority." Conversely, in March 1778, he supported the Nawab's pretensions to take upon himself the management of all offices held by the Naib Nazim. He argued that the Nawab had "an incontestable right to the Nizamat" and that it was his "by inheritance." The purpose underlying these two contradictory statements was, however, the same—to keep Reza Khan out of power. By the latter date, Hastings had regained his authority in the Council. In September 1776, Monson had died. His death was followed by that of Clavering in August 1777. It was not, therefore, a difficult task for Hastings to

remove Reza Khan and promote Sadrul Haq Khan, an old devotee of his, immediately afterwards to the vacancy of the Naib Nazim's office. Under the orders of the Directors, Reza Khan had to be restored for the second time in November 1779, but Hastings had no longer any cause for anxiety. Towards the end of 1780, Impey was won over by the offer of charge of the Sadr Diwani Adalat and Francis, the most formidable of Hastings' opponents, left for England. Other foreign traders in Bengal were considerably weakened. Hastings was now in a position to return to his long-cherished design of introducing British sovereignty by exhausting the functions of the Nizamat, which planned in 1772 had been continually disturbed in the intervening years.

Failure of the system of Faujdars and thanadars provided the basis of his judicial reforms of April 1781. He came to revise his views about the efficacy of indigenous institutions. Financial stringency on the part of the English Government, non-co-operation of the zamindars, lack of adequate authority in the Nizamat and break-down of zamindari authority as a consequence of farming experiment and other administrative innovations were serious limitations of the system of Faujdars. Nevertheless, instead of rectifying these fundamental drawbacks, he did away with the Faujdars except the one at Hugli. He gave magisterial powers to the English judges of the Diwani Adalats. Henceforth, they were to arrest criminals and commit them to the courts of law. A covenanted servant was appointed at the head of a central office at Fort William to assist the Governor-General in supervising the activities of magistrates, zamindars and Faujdari judges.

In July 1782 Hastings reduced the expenses of the Faujdari department. Faujdari Adalats at seven places as also the Faujdari office of Hugli were abolished. A separate establishment was assigned to each of the magistrates.

In April 1785 Macpherson's Government authorised the magistrates to try very petty cases and punish the guilty by imprisonment upto four days or by fifteen stripes.

Cornwallis gave a new emphasis to Hastings' policy. In

June 1787, he extended the judicial powers of the magistrates to the infliction of sixteen stripes and fifteen days' imprisonment. He also made arrangements for notorious criminals being transported to Penang.

But the irregularities of the courts of law and defects of Muslim Law called for radical reforms. Murders and robberies were daily committed with a large measure of impunity. Officers of justice were ill-paid, negligent or prone to corruption. Delays defeated the ends of justice. Task of policing was still entrusted to the zamindars whose interest lay in its failure. Instead of collaborating with the magistrates, zamindars obstructed their policing activities and screened criminals from the hands of justice. Jails were crowded beyond capacity. The insecurity of jails led to cruel precautions against escapes of prisoners.

In December 1790 Cornwallis abolished the entire machinery of criminal justice, including Naib Nazim's office. A new Sadr Nizamat Adalat and four courts of circuit, filled up by European judges were set up under the direct charge of the Governor-General and Council. At the same time provisions of Muslim Law on homicide were amended, thus fulfilling Hastings' suggestions of 1773. The Nawab came to be a *functus officio* with an empty title and a conditional pension and the British sovereignty was fully established in Bengal.

In the next two years, measures were taken for the improvement of new courts, jails and the laws of prosecution and evidence. Punishment of mutilation was annulled. In December 1792, the police staff of zamindars were discharged. The English Government took over the direct responsibility of Police also. All these changes were incorporated in the Code of May 1793. When Mubarak-ud-daulah was succeeded by Nasir-ul-Mulk in September 1793, no Mughal Farman nor any treaty with the Company heralded the accession of a Nawab to the masnad of Bengal.

In the history of the Nizamat in decline Reza Khan undoubtedly played a very important part. It was the policy of keeping the Nizamat in absolute dependence on the English without violating its constitution that determined the English

Government's choice of him for the Naib Nazim's office. He was a foreigner settled in Bengal. He had no great achievement to his credit. On the contrary, a serious allegation of being a defaulter in respect of the Dacca revenues was pending against his name. There was no love lost between him and Mir Jafar's family. But all these facts were outweighed by his attachment to the Company at the time of their conflict with Mir Kasim. Immediately after Mir Jafar's death he was, therefore, raised with an unbecoming haste to the highest office of the Nizamat. He continued to hold that office till December 1790, except for two short periods in 1772-75 and 1778-79. Contemporary opinions about him were as conflicting as they were numerous, from the highest eulogies to bitter reproaches. From the chaos of these divergent views the fact that emerges is his unflinching allegiance to the English Government. Promotion of the cause of the English and of his own was the *summum bonum* of his life. And he served one great purpose of history. His lifelong co-operation smoothed the process of supersession of the Nazim's jurisdiction in Bengal.

Could Reza Khan, if he had tried, have averted the fall of the Nizamat by arresting the forces of disruption within it and the continuous encroachment of the British authority ? Certainly not. While the entire management of the finances, defence and civil administration lay in the Company it was fundamentally anomalous to suffer the Nizamat to exercise criminal administration without necessary authority. Fall of the Nizamat was inevitable. It was delayed only by the slow operation of British imperium.

APPENDIX A

Abstract of trials for capital crimes at Murshidabad and Krishnagar (1773).
(Rev. Cons., 3 Aug. 1773).

<u>Names of prisoners.</u>	<u>Crimes.</u>	<u>Sentence of the Nizamat Adalat.</u>	<u>Remarks of Hastings.</u>
Agroocha		Murshidabad Acquitted.	Not entered in the register.
Futtoo			
Deeboo			
Cudma			
Mya			
Shanker Ally.	Decoying	Death, to be inflicted either by first cutting off the hand and foot or without that punishment	The families of the criminals ought to be enquired after and deprived of their liberty agreeable to the 35th Article of the Judicial Regulations.
Muzuffer Ally.		or by the sword.	
Munza.		To be punished with 30 stripes and confined.	
Dhunna.			
Bannoo.	do		As the crime is clearly proved although attended with circumstances of extenuation the confinement ought to be perpetual.
Ramma Gaut	do	None.	Neither accused nor formally tried. By the confession of Bannoo, Ramma is charged with the commission of robbery and murder and of instigating the other to abet him in both these crimes. This charge is confirmed by the evidence of the prisoner himself where he declares that the confession of Bannoo is true, notwithstanding he appears thus to be the principal in these crimes he escapes because he has acknowledged in express terms that he is guilty. He ought to undergo a formal trial.
Mangu.			

<u>Names of prisoners.</u>	<u>Crimes.</u>	<u>Sentence of the</u>		<u>Remarks of Hastings.</u>
		<u>Nizamat Adalat.</u>		
Ramzanny of Banga.	Murder	Death (sic, Diyat)		For killing the slave wo- man of Khooner. Death ought to be inflicted for this crime.
Ramma.	Murder	Death (sic, Di- yat) at the op- tion of the Na- zim.		The person has confessed that he murdered the daughter of Dewal, an infant of 7 years of age by holding her under water till she died and afterwards stealing the ornaments she wore. As the intention of murder is clearly marked by the manner of the deceased's death and by the subse- quent robbery, the punish- ment ought to be death.
Koober Jemautur of Booda Parah.	Decoyting.	Stripes or im- prisonment.		Tried for stealing 18 cows (in company with 15 per- sons) value from 2 to 1 Rupee each, and in the opinion of the Court when the amount received by each accomplice is under 10 Dirhams it is not reckoned decoyting. However as the degree and nature of the crime depend on the intention and first design of the criminal rather than on the issue of it, the crimi- nal ought to have been sentenced to death as a decoy, not to a lighter punishment for petty larceny, as it is adjudged by the Mussulman Law since it is proved that he went with a band of rob-

<u>Names of prisoners.</u>	<u>Crimes.</u>	<u>Sentence of the Nizamat Adalat.</u>	<u>Remarks of Hastings.</u>
Khaun			
Mahomed of }	Murder.	Death	
Md Eitch		(sic, Diyat)	
Cawn Bazar.			
			bers to a village with the design of plundering it. Though unsuccessful and unattended with the bloody consequences which often accompany such enterprises, he was no less a decoit than if he had met with opposition and murdered half the inhabitants, or had come away with a richer booty, nevertheless as the sentence extends no further than to imprisonment, it ought to be perpetual, as the man will hardly change his way of life by having suffered so little by it. For beating his slave girl so that she died ; but as it does not appear that there was any intention of murder and Mahomedan Law as well as ours admits of moderate correction to a slave or even a hired servant, the prisoner ought to be acquitted or forgiven.

Krishnagar

Beyee, wife of Nemay.	Adultery and attempt to cut her husband's throat.	Rajum or ston- ing to death.
Kidwa.	Adultery with the former.	Rajum, if mar- ried or to receive 100 lashes.

<u>Names of prisoners.</u>	<u>Crimes.</u>	<u>Sentence of the Nizamat Adalat.</u>		<u>Remarks of Hastings.</u>
Yacoob.	Murder.	Death (s/c, Diyat)		As he struck a man whom he found in his apartment in the night, he does not appear to be guilty.
Horranu Moochee	do	do		Merits death.
Mamdur with three others.	do	do	Rs. 3333-5-4.	He confesses the crime and merits death.
Pannchoo.	Present when the body was taken away.	Stripes.		Just.
Loocha Pich				
Rajah Koit				
Gocul Koit				
Doorga Gowalle				
Herria Pyke				
Dulvia Pyke				
Chaund Pyke				
Gonga Mocha				
Khizzoor				
Dhunnaoo				
Ramnaut				
Mocha and two others.				
Meequa and Ramnaut.	Privy to the murder and shared in the booty.	Stripes and imprisonment.		

APPENDIX B

The Specimen of a Razinama.

(Rev. Jud. Cons, 3 Dec. 1790).

"Whereas, I, Nuser Mahomed, son of Saunchey, inhabitant of Nul-wah situate in Nyapara did prefer a complaint at the Phauzday against Mahomed Ohsein, Mahomed Rustum, Fateah Mahomed Fadey and Dohmum, charging the said persons with an assault, extorting of money and with having murdered my grand-father Mahomed Eassein which was accordingly referred to the Nizamut Adawlut and having now received the sum of rupees 80 being monies that the above persons had taken had hereby received satisfaction for the murder of my grand-father Mahomed Eassein and have of my free will and accord executed a release in favour of the said persons, whereby I disclaim all right and title to further satisfaction and have accordingly executed this said paper as a Razinamah."

Order of the court

"As it appears that the prosecutor has relinquished his title to complain and received a pecuniary gratification of rupees 80, ordered that the defendants be acquitted."

APPENDIX C

An abstract account of the servants and monthly expenditure of the Faujdari Adalats before and after Reza Khan's Plan (1776).
(Home Misc., Vol. 353, App. I, pp. 194-195).

Adalats	Previous Establishment (1773-76)		Proposed Establishment (1776)	
	Number of servants.	Monthly expenditure. Rs.	Number of servants.	Monthly expenditure. Rs.
Sadr Nizamat				
Adalat at				
Murshidabad.	8	3409	9	2909
Murshidabad District.	231	2352	206	1908
Chitpore (extended to Cossipore)	89	1481-11	65	832-11
Dacca District	11	410	40	760
Sylhet "	8	310	18	385
Burdwan "	19	420	19	420
Hugli "	18	385	18	385
Birbhum "	18	385	18	385
Purnea "	18	385	18	385
Krishnagar "	18	385	18	385
Bhagalpur "	18	385	18	385
Midnapore "	18	385	18	385
Chittagong "	18	385	18	385
Dinajpur "	18	385	18	385
Rangpur "	18	385	18	385
Jessore "	18	385	18	385
Bhittoreah "	18	385	18	385
Bhusna "	18	385	18	385
Bishnupur "	18	385	18	385
Rajmahal "	—	—	18	385
Hijli "	—	—	18	385
Khurrockpore "	—	—	18	385
Kalighat	—	—	25	361
Patna	—	—	40	740
	600	Rs. 13387-11	710	Rs. 14475-11

APPENDIX D

The establishments of Faujdari Adalats
before and after Reza Khan's Plan (1776).
(*Home Misc.*, Vol. 353, App. I, pp. 196-207).

SADR NIZAMAT ADALAT AT MURSHIDABAD

	Former Establishment		Proposed Establishment	
	Servants	Wages	Servants	Wages
		Rs.		Rs.
Daroga	1	1500	1	900
Head Qazi	1	750	1	750
Mufti	1	350	1	350
Maulavis	3	600	4	700
Munshi	1	80	1	80
Sarishtadar	1	100	1	100
Dastarband, fraush and māhtre		29		29
	8	Rs. 3409	9	Rs. 2909

FAUJDARI ADALAT AT MURSHIDABAD

	Former Establishment		Proposed Establishment	
	Servants	Wages	Servants	Wages
		Rs.		Rs.
Faujdar	1	500	1	400
Naib	1	100	1	50
Qazi	1	250	1	200
Naibs	4	60	4	60
Mufti	1	100	1	75
Maulavis	2	200	1	150
Munshi	1	60	1	40
Peshkars and muharrirs	4	110	4	85
Vakil	1	50	1	30
Tubbeeb	1	12	1	12
Mullah of the Quran	1	12	1	10
Gurry-wallah	1	6	1	4
Mirdaha, naibs and peons.	205	852	180	752
Dastarband	1	5	1	5

	<u>Former Establishment</u>		<u>Proposed Establishment</u>	
	<u>Servants</u>	<u>Wages</u>	<u>Servants</u>	
		Rs.		
Fraush	1	4	1	4
Tazeanaburdar	1	5	1	5
Gourcunds	2	8	1	8
Jallad	1	8	1	8
Paper, ink etc.		10		10
Total	230	Rs. 2352	203	Rs. 1908

ADALAT AT CHITPORE

	<u>Former Establishment</u>		<u>Proposed Establishment</u>	
	<u>Servants</u>	<u>Wages</u>	<u>Servants</u>	
		Rs.		
Mr. Durham	1	500		
Daroga	1	150	1	150
Qazi	1	100	1	100
Mufti	1	100	1	100
Maulavis	2	100	2	100
Peshkar etc.	10	221	5	130
Peons, harkaras etc.	59	239	45	164
Mullah	1	5	1	5
Brahmin	1	5	1	5
Tubbeeb	1	20	1	20
Tazeanaburdar	1	6	1	6
Smith	1	2	1	2
Moordafraush	2	5	2	6
Cryer	1	2	1	3
Sabaram	1	12	1	12
Paiks	3	7-8	3	7-8
Daftarbund, mahtre, oil and musaul.	2	7-3	2	22-3
Sustenance for prisoners each person, 3 pound of cowries per day	}			
Total	89	Rs. 1481-11	69	Rs. 832-11

ADALAT AT DACCA

	<u>Former Establishment</u>		<u>Proposed Establishment</u>	
	<u>Servants</u>	<u>Wages</u>	<u>Servants</u>	<u>Wages</u>
		Rs.		Rs.
Daroga	1	50	1	150
Qazis with naibs	6	250	5	200
Mufti	1	50	1	75
Maulavi	1	30	2	100
Munshi			1	30
Peshkar			1	50
Muharrirs	2	30	3	45
Mirdaha with peons			22	76
Mullah			1	7
Brahmin			1	5
Daftarbandal			1	4
Fraush			1	4
Oil, paper, ink and mats				14
	11	Rs. 410	40	Rs. 760

ADALAT AT SYLHET

	<u>Former Establishment</u>		<u>Proposed Establishment</u>	
	<u>Servants</u>	<u>Wages</u>	<u>Servants</u>	<u>Wages</u>
		Rs.		Rs.
Daroga	1	50	1	75
Qazis	3	150	5	125
Mufti	1	50	1	50
Maulavi	1	30	1	40
Munshis	2	30	3	60
Mirdaha with peons			6	25
Mullah			1	5
Paper, ink				5
	8	Rs. 310	18	Rs. 385

ADALAT AT BURDWAN*

	<u>Servants</u>	<u>Wages</u>
		Rs.
Daroga	1	75
Qazis and naibs	6	160

* No alteration in the previous establishment.

	<u>Servants</u>	<u>wages</u>
Muharrirs	1	40
Munshis	4	110
Mirdaha with peons	6	25
Mullah	1	5
Paper and ink		5
	<u>19</u>	<u>Rs. 420</u>

ADALAT AT HUGLI*

	<u>Servants</u>	<u>Wages</u>
		Rs.
Daroga	1	75
Qazis with naibs	5	125
Muftis	1	50
Maulavis	1	40
Munshis	3	60
Mirdaha with peons	6	25
Mullah	1	5
Paper and ink		5
	<u>18</u>	<u>Rs. 385</u>

ADALAT AT KALIGHAT : The proposed establishment.

	<u>Servants</u>	<u>Wages</u>
		Rs.
Daroga	1	75
Qazi	1	65
Mufti	1	50
Maulavi	1	40
Munshi	1	30
Muharrirs	2	30
Mirdaha and peons	17	61
Mullah	1	5
Paper, ink		5
	<u>25</u>	<u>Rs. 361</u>

* *Ibid.*

Adalats at Birbhum, Purnea, Krishnagar, Bhagalpur, Midnapur, Chittagong, Dinajpur, Rangpur, Jessore, Bhaturia, Bhusna, Bishnupur, Rajmahal, Hijili and Khurruckpur same as at Hugli.

ADALAT AT PATNA : The proposed establishment.

	<u>Servants</u>	<u>Wages</u>
		Rs.
Daroga	1	150
Qazi and naibs	5	180
Mufti	1	75
Maulavis	2	100
Peshkar	1	50
Munshi	1	30
Muharrirs	3	45
Mirdaha with peons	22	76
Brahmin	1	5
Daftarbandal	1	4
Fraush	1	4
Mullah	1	7
Oil and mussauil	1	14
	<hr/> 41	<hr/> Rs. 740

APPENDIX E

An abstract account of the establishments of Faujdari stations proposed by Reza Khan (1776).

(*Home Misc.*, Vol. 353, App I, pp. 212-13).

<u>Thanas, Chaukis and Chubbooteras</u>	<u>Number of Thanas</u>	<u>Number of Chaukis</u>	<u>Number of Chubbooteras</u>	<u>Number of Chubbooteras</u>	<u>Number of Boats</u>	<u>Number of Servants</u>	<u>Monthly Expenditure.</u>
Murshidabad and its dependencies.	1	2	18	..	496	2238	
Calcutta and its dependencies.	1	3	..	..	109	1132	
Mirzanagar and its dependencies.	1	1	..	..	59	704	
Pandol extending over Chaklas of Bhusna and Mah-mudshahi.	1	1	..	..	59	704	

Thanas, Chaukis and Chubbooteras	Number of Thanas	Number of Chaukis	Number of Chouboteras	Number of Boats	Number of Servants	Monthly Expendi- ture. Rs.
Katwah	1	1	..	..	59	704
Purnea	1	4	..	..	134	1346
Azimabad (Patna) in the Bihar province.	1	8	..	..	234	2202
Hijli	1	..	..	..	34	490
Midnapore	1	..	..	..	34	490
Burdwan	1	..	..	..	34	490
Bishnupur	1	..	..	..	34	490
Hugli	1	..	..	..	34	490
Seori dependent on Birbhum	1	..	..	..	34	490
Jilisherepur	1	..	..	..	34	490
Godagari	1	..	..	..	34	490
Rajmahal	1	..	..	..	34	490
Bhagalpur at Cahul- gaonj	1	..	..	..	34	490
Sultanganj-Jehangira	1	..	..	..	34	490
Dinajpur	1	..	..	..	34	490
Rangpur at Futtapur	1	..	..	..	34	490
Ghoraghata	1	..	..	..	34	490
Chapla dependent on Bhittoreah	1	..	..	..	34	490
Chittagong	1	..	..	..	34	490
Jahangirnagar (Dacca)	1	4	..	32	158	2342
For the defence of the river at Jafirganj on the borders of Jahan- girnagar to Cunagola on the borders of Purnea 2	..	..	..	16	62	926
Sarishta of the Faujdari thanas at Murshidabad to take care of all the accounts of the Faujdars.	..	..	..	..	18	485
Total	26	24	18	48	1932	Rs. 20623

APPENDIX F

A list of some inadequate sentences passed on prisoners in the Faujdari jail
of Burdwan.

(Rev. Jud. Cons, 3 Dec. 1790).

<u>Name</u>	<u>Crime</u>	<u>Sentence</u>
1. Nushroo Gocooll	Perjury proved in the Dewanny Adawlut.	Released without any reason assigned.
2. Golaum Moortezah.	Perjury proved in the Dewanny Adaw- lut.	Released without any reason assigned.
3. Jeettoo.	Murder proved by his own confession.	The prisoner having compro- mised the murder with the prosecutor he is released.
4. Gunnessaum.	Murder proved by his own confession.	The prisoner having compro- mised the murder with the prosecutor he is released.
5. Abhaw Churan Sircar.	Surder of Dakoits proved.	Released on security by the Darogah of the Foujedarry Adawlut.
6. Cummull Roy	Protecting Dakoits & receiving stolen goods proved.	Released on security by the Darogah of the Foujedarry Adawlut.
7. Ramsunker Sain.	An atrocious theft proved by his own confession and the stolen property found upon him.	Stolen goods returned to the prosecutor, prisoner to re- ceive thirtynine strokes with a Corah, a Muchulka taken from him and released.
8. Saurtuck Gungaram	Dakoits proved by their own confes- sion.	To receive thirtynine strokes with a Corah & confined for four months, after which released on their giving Mu- chulka & Bail.
9. Saurtuck.	Dakot proved by his own confession.	To receive thirtynine strokes with a Corah & confined for four months, after which released on their giving Mu- chulka & Bail.
10. Kunny Abhursa. Lochaw Saffle	Murder and Rob- bery proved by the evidence of their ac- complices & ca.	To receive thirtynine strokes with a Corah and confined at pleasure.

<u>Name</u>	<u>Crime</u>	<u>Sentence</u>
Doolaull		
Golkah		
Doolaull		
Ramnaut		
Tanadar.		
11. Suddah	Murder & Robbery	To receive thirty-nine strokes
Baugdee	proved by the evi-	with a Corah & confined at
Aurzoon	dence of their ac-	pleasure and their characters
Tilloke	complices &c.	to be reported on to the Nazim.
Aunundiah		
Govind		
Coossah		
Gungah		
Saffieah		
Nillah Dome		
Gungah Dome		
Dhurnee		
Sallageah		
Saurtuck		
Mannick Dome		
Anund Dome		
Muckooah		
Panchcouree		
Buddiah		
Shaumah.		

N.B. Thirtynine strokes of the Corah effectually applied would occasion certain death, but as now given it becomes more a matter of ceremony than a real punishment, at any rate it is certainly an improper one for the crimes of murder and robbery as the persons actually guilty of those crimes should be punished with death ; if innocent not punished at all.

Burdwan

23d January 1790
 (Sig'd.) Law/ce Mercer
 Magistrate.

APPENDIX G

Some Benares cases

The inconsistency of Muslim penal law to natural justice could not be overlooked by the British administrators. The following account will throw light on some of the incongruities which led Resident Duncan to make frequent and positive interpositions in the judicial administration in Benares.

Jonathan Duncan arrived in Benares in September 1787. He was vested with the powers of approving or disapproving the criminal trials in Benares. If it appeared to him that a passive adherence to the provisions and formalities of the law would enable a convict to escape the merited punishment he was to pass the proper sentence and report it to the Council either before or after its execution, according to the exigency of the case. The special power thus delegated to him did not extend, however, to punishments affecting life or limb or to those of perpetual imprisonment. As for the latter, he was to apply for the Council's previous sanction.

It was on his representations that the Governor-General-in-Council frequently revised sentences passed by the Benares judges. In a case of theft, the charge against Munsa was fully proved, yet he could not be sentenced to the punishment he deserved, because the owner of the stolen goods, a Maratha traveller was not forthcoming. The decision was left to the discretion of the Hakim (supreme magistrate). In another case of theft, the accused Ochchla denied the charge, while his wife admitted the crime of her husband. Even so, he could not be pronounced guilty, since to convict a thief the evidence of two men or of two women and one man was requisite. Duncan, however, ordered both Munsa and Ochchla to be confined for four months and to work on the roads during that period. The Governor-General's approval of this punishment—a new kind in Benares—was given on 28 November 1788.¹

The cases of Brahmin murderers of Benares required some special treatment. Bhawani Bukhsh, a Maha Brahmin, killed Sheopershau'd with a sharp weapon. His accomplice, a weaver, brought out Sheopershau'd to the fields on the pretext of hunting, but stood at a distance at the time of the misdeed. Both the persons confessed their guilt. The parents and wife of the deceased demanding Qisas, death sentence was passed on the Brahmin by the Faujdari Adalat. As the accomplice deserved Tazir it was left to the discretion of the Hakim or judge to inflict on him any sentence short of death. The Council directed Duncan to have the capital sentence carried out and keep the weaver in confinement until their further orders. In reply to their repeated orders to that effect, Duncan explained his reasons for non-compliance by referring to Halhed's translation of the Code of Hindu Laws, a work compiled under the immediate authority of the British Government. It provided for the exemption of Brahmins from capital punishment by expressly declaring that there was no crime so great as that of murdering a Brahmin and if a Brahmin killed another Brahmin, the magistrate should neither put him to death nor cut off his limbs, but was to punish him only by branding him in the forehead with the mark of a man without a head and also by banishment, confiscation of property and the like.²

A Brahmin's execution was likely to offend the religious susceptibilities not only of the Brahmins, but also of the majority of the population—the Hindus; on the contrary a notorious murderer could not be possibly set at liberty. On 4 February 1789, the English Government, therefore, remitted the capital sentence on the said Brahmin and directed the Resident to assemble the principal Pundits of Benares in his kachahri, ask for their opinions and then inflict "the most severe and exemplary punishment" allowed by the Hindu Law in such cases. A threat was also made that in similar cases in future, a Brahmin would be liable to suffer the capital punishment "in conformity to the established usages of the Muhammadan Government." On 1 March, the Resident accordingly, met the Pundits and explained the Council's directions to them.

The Pundits did not disapprove the above. Kashinath, Pundit of the Resident's kachahri, then expounded the principles of Hindu criminal justice, relevant to the case under discussion.

Kashinath's interpretation of the Hindu Shastras was as follows. A Brahmin could neither be put to death nor be wounded. His property could be taken from him. According to Manu, his head was to be shaved and he was to be expelled from the country and to have a stamp impressed on his forehead. Then he was to be seated on an ass. For theft, the stamp upon his forehead was the figure of a dog's foot and for murder, the figure of a man without a head. As a Brahmin was to go without any wound, this mark on the forehead, according to one school of law, was to be painted with lime or black matter. Again, the punishment laid down by another authority providing that a Brahmin was to "lose" his eyes for murder, was explained by his commentator to mean no more than that when such a Brahmin was being expelled from his country, his eyes were to be tied with a cloth..

The Resident then wrote to the judge of the Mulki Adalat to punish Bhawani Bukhsh according to Hindu Law. So his head was to be shaved, the figure of a man without a head was to be portrayed on his forehead and he was further to be expelled with threats of double punishment, if he ever returned to any of the Company's dominions, namely, Bengal, Bihar and Benares.³

The threat of 4 February, however, proved of little avail in most cases, as even by trying the Brahmins strictly according to the Quranic Law, a Brahmin murderer could not be executed. So deep-rooted was the prejudice that a Brahmin should not be put to death that in most cases, the heirs of the murdered person who alone could claim Qisas or Diyat, were found to be disinclined to make such a claim against a Brahmin murderer. The Muslim penal law which had forcibly superseded the law of the conquered Hindus could not undo the privileged position of the Brahmins in society. Their exemption from capital punishment survived the onslaughts of many centuries. And it will not be wrong to say that in their case, the Muslim penal

law joined hands with the Hindu tradition to virtually facilitate an easy escape for the offender.

On 27 May 1789, Ramjeewan, a Brahmin of Benares, stabbed his wife to death. He confessed his guilt and was a fit object of Qisas. But considering that he was a Brahmin, all the legal claimants of the deceased woman voluntarily pardoned him. His mother-in-law also declared that the accused having given her one of his houses, she had forgone her claim for Qisas or Diyat. Thus Ramjeewan became entitled to be released. The Hakim, however, had the discretion to inflict some punishment by way of example, if necessary. Duncan managed to cause the suspension of the order of release till the receipt of the Council's orders. On 11 November, the Government's orders were issued sentencing Ramjeewan to perpetual imprisonment.⁴

Henceforth, it became the policy of the English Government to condemn Brahmin murderers to perpetual imprisonment. This cautious endeavour to introduce some kind of regularity in the dispensation of justice did not, however, go unchallenged. On 10 August 1790, the Resident sent intimation that Sheolal, a Brahmin convicted of murdering three persons, had taken to fasting, along with some other prisoners of the Mulki Faujdari jail, with the declared intention of starving themselves to death, if not released. The Resident pointed out the inevitable consequences of yielding to such artifice, which, said he, was one of the common means by which the Brahmins of this country had long kept themselves above all rule whatsoever. The English Government did not yield to that hunger-strike and Sheolal was sentenced to perpetual imprisonment.⁵ Similarly, the sentence passed on Rummun and Nanoo, Brahmins who murdered a Sudra, was perpetual imprisonment.⁶

On 21 September 1790, Duncan suggested that if the Brahmin murderers were transported to Pulo Penang or to a similar place so that their relatives would never hear of them, the terror of "a real banishment" would soon prove to be highly deterrent. This measure, added he, "would not be contrary to the Hindu Law." His suggestion was accepted by the

Council. Before it was put into operation, the Resident was directed to give public warning that Brahmins convicted of wilful murder would be liable to be transported to Penang and kept there during the rest of their lives. The Government notification to that effect was published only three days before the year 1790 ended.⁷

References

1. Rev. Cons., 28 Nov. 1788.

In some cases, however, the Council confirmed the decrees of the Mudki Faujdari Adalat. In the case of Kishna, who had murdered his wife and her paramour, no heirs of the murdered were forthcoming. The parties, here, were Hindus. According to Muslim Law, if a non-Muslim committed fornication, he was not to be put to death like a Muslim, he was only to suffer 100 lashes. The homicide in this case was not, therefore, legally justified. This was a case of Qisas. Both the parties in this case were foreigners in the Benares region, and their relatives could not be traced. But the heirs of the victim alone could claim Qisas or Diyat. The fatwa, therefore, ordained Kishna to remain in confinement till the heir would appear. The Council did not change this decree. (Rev. Cons., 2 June 1790)

In the same court, Jayhee, a prostitute of Mirzapur, complained against Mohan, a Brahmin, for the restoration of her slave girl, Mulagyr, whom she had purchased at the time of a famine for a rupee only. The law-officers did not recognise the competency of the plaintiff's witnesses due to their being traders in iniquity and dismissed the case on the ground that the sale of a free person was invalid and, therefore, the plaintiff had no claim against Mulagyr who was her own mistress. The above decree was approved of by the Resident and ordered to be enforced. (Rev. Jud. Cons., 10 Nov. 1790)

In the case of Juroo Robal, a fifer of the "Black Feringhee caste," who killed his wife under the influence of liquor, the Diyat prescribed was Rs. 3,125 ; for the offence of death caused by blows from the fist or open hand, where the intention to murder was open to doubt, was punishable with Diyat. As their daughter was only a child of two years, the fatwa stated that on attaining majority she would be at liberty either to demand the price of blood or to excuse it. The Resident doubted the validity of the sentence passed on a Christian in a Muslim criminal court and asked for orders of the Council. The Council,

however, confirmed these proceedings and ordered Juroo Robal's release on bail in conformity to the fatwa. (Rev. Jud. Cons., 31 Dec. 1790).

2. Rev. Cons., 4 Jan. 1789 ; Halhed, *A Code of Gentoo Laws*, p. 320.

Section 23 of Regulation 16 of 1795 also ratified the exemption of the Brahmins of Benares from capital punishment. This privilege was repealed under certain reservations by section 15 of Regulation 17 of 1817.

3. Rev. Cons., 25 March 1789.

4. Rev. Cons., 11 Nov. 1789.

5. Rev. Jud. Cons., 25 Aug. 1790.

6. Rev. Cons., 21 July 1790 ; Rev. Jud. Cons., 8 Oct. 1790.

The Hindu Law, however, made a distinction among even the Brahmin murderers. Branding in the forehead was inflictible only upon a Brhmin who killed another of this favoured caste. If the party killed was a Sudra, the murderer was to have only his face besmeared, to be "shorn" and banished. What was done in the name of banishment did not, strictly speaking, deserve that term, he was generally sent out of his district into the contiguous country.

7. Rev. Jud. Cons., 8 Oct. 1790 ; 7 Jan. 1791.

For instance, the Brahmin murderers, Bulraje and Durgah, were transported to Pulo Penang. *Vide* Rev. Jud. Cons., 21 Sept., 10 Oct., 1792.

APPENDIX H

A list of magistrates who replied to Cornwallis's
queries (1789-1790).

<u>Reference</u>	<u>Name of the district</u>	<u>Name of magistrate</u>
Rev. Jud. Cons.,		
3 Dec. 1790.		
O.C No. 3	Birbhum and Bishnupur	C. Keating
" " 4	Bhagalpur	A. Seton
" " 5	Burdwan	L. Mercer
" " 6	Chittagong	S. Bird
" " 7	Dacca City	*
" " 8	Dacca Jalalpur	S. Middleton
" " 9	Dinajpur	G. Hatch
" " 10	Bihar	T. Law
" " 11	Hijili	Hewett
" " 12	Jessore	R. Rocke
" " 13	Midnapur	C. Burrowes
" " 14	Murshidabad City	C. C. Burges
" " 15	Zila Murshidabad	I. E. Harrington
" " 16	Nadia	F. Redfearn
" " 17	Patna	G. F. Grand
" " 18	Twenty-four Parganas	W. Pye
" " 19	Purnea	*
" " 20	Rajshahi	T. Henckell
" " 21	Ramgarh	M. Leslie
" " 22	Rangpur	J. Graham
" " 23	Sarkar Saran	A. Montgomerie
" " 24	Shahabad	W. A. Brooke
" " 25	Sylhet	J. Willes
" " 26	Tirhut	R. Bathurst
" " 2	Sundarbans	H. Lodge †

* Name is not mentioned in the proceedings.

† The Commissioner of the Sundarbans with his headquarters at Bakarganj.

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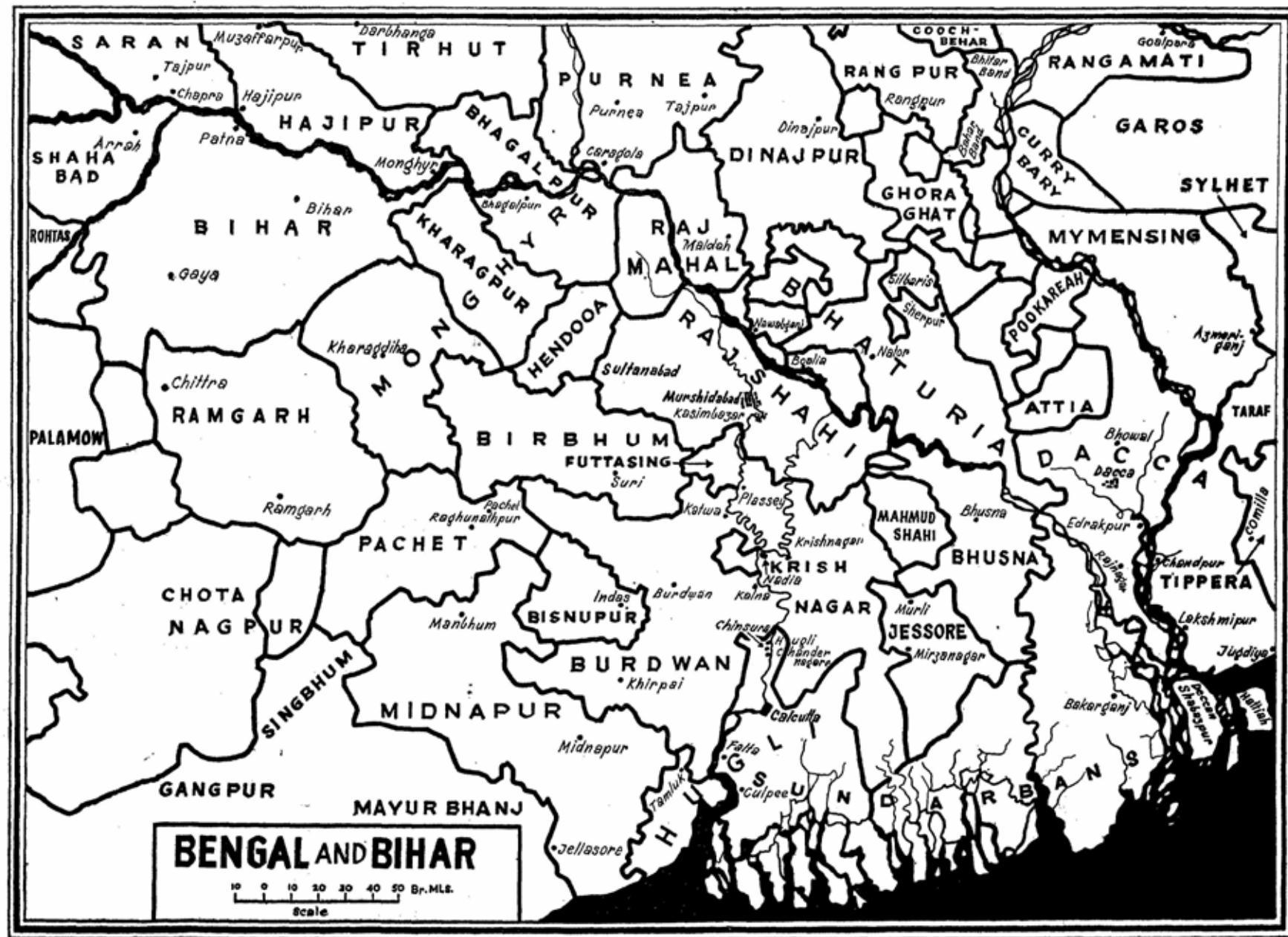
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